



DEPARTMENT OF THE AIR FORCE

WASHINGTON, D.C. 20330-1000

OFFICE OF THE GENERAL COUNSEL

June 17, 2003

MEMORANDUM FOR THE SECRETARY AND THE CHIEF OF STAFF OF THE AIR FORCE

FROM: The General Counsel of the Air Force

SUBJECT: Transmittal of Air Force Academy Working Group Report

I hereby transmit to you The Report of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy. This Report is the result of a collaborative effort at the highest levels of Air Force leadership and responds to your request for a review of the policies, programs and practices of the Air Force Academy to deter and respond to incidents of sexual assault. In the course of conducting its investigation, the Working Group reviewed thousands of pages of information and conducted hundreds of interviews, including those with present and former cadets, Academy faculty, Air Force leadership, and the local community. After considering Academy policies, programs and responses to reported sexual assaults during the ten-year period from January 1993 to December 2002, the Report makes specific findings, conclusions and recommendations, many of which have been addressed by your *Agenda for Change*, dated March 26, 2003.

Although the Report attempts to provide a comprehensive review of Academy processes related to sexual assault, there were limitations on the Working Group's effort. Specifically, consistent with your direction, cadet allegations of sexual assault and complaints regarding the handling of specific cases were referred directly to the Air Force Inspector General and that review is ongoing as of the date of the Report. In addition, the Department of Defense Inspector General and an independent panel recently named by the Secretary of Defense are conducting reviews of sexual assault matters at the Academy. The results of these efforts may provide you with additional information regarding the Academy for your consideration.

In closing, I would like to communicate to you on behalf of the Working Group that it has been an honor to serve you and the Department of the Air Force in conducting this important review. The Air Force Academy is one of our finest military institutions and has trained generations of leaders to serve our great Nation, including many outstanding women leaders in today's Air Force. It is my sincere desire that this Report will prove useful in your ongoing efforts to maintain the highest standards and values among the men and women of the United States Air Force.

A handwritten signature in blue ink, reading "Mary Walker", is positioned above the typed name.

Hon. Mary L. Walker
General Counsel



**The Report of the Working Group
Concerning the
Deterrence of and Response to
Incidents of Sexual Assault
at the
U. S. Air Force Academy**

June 2003

HEADQUARTERS, UNITED STATES AIR FORCE

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Executive Summary

Introduction

On January 2, 2003, Dr. James G. Roche, the Secretary of the Air Force, received an e-mail directed initially to female cadets, which asserted that there was a significant sexual assault problem at the United States Air Force Academy that had been ignored by the Academy's leadership. Upon receipt of the e-mail, Secretary Roche immediately directed the General Counsel of the Air Force to lead a high-level working group to review cadet complaints, and the policies, programs and practices of the Academy to deter and respond to incidents of sexual assault, with a view toward making recommendations as appropriate. Secretary Roche also tasked the Working Group to review cases of sexual assault that had been reported from January 1993 to December 2002. In conducting this review, the Working Group was to keep in mind both "the goal of the Academy to develop leaders of character for tomorrow's Air Force, and ordinary Air Force processes."

The Secretary subsequently directed that the Air Force Inspector General review individual cases and cadet complaints concerning the handling of any cases. That review is still pending.

The Working Group¹ received briefings, reviewed pertinent information, identified additional documents and information needed and dispatched a staff team to the Academy to gather facts and interview those with knowledge of the program's history and its practices over time. The Working Group also consulted various experts in the Air Force including those in the areas of victim psychology, sexual assault and statistics.

Cadet victims were interviewed, including at least one associated with the January 2, 2003 e-mail. In order to allow for contact from cadet victims, the Working Group established telephone numbers and an e-mail address for present and former cadets to provide comments. To allow the reporting of previously unreported allegations, a separate telephone number was provided for victims to reach the Air Force Inspector General's office directly. Points of contact, including a toll-free number, were provided to Congressional and other offices that had indicated to the Working Group they were in contact with victims.

In addition to examining the Academy's current processes to deter and respond to sexual assaults, the Working Group considered the evolution of the Academy's program and attempted to identify underlying factors that contribute to or provide opportunities for incidents of sexual assault to occur.

An interim report of the Working Group's findings was provided to the Secretary and Chief of Staff in March 2003, and based in part on that report, the Secretary and Chief of Staff announced

¹ The Working Group consists of the following individuals by title: The General Counsel (chair), the Assistant Secretary for Manpower and Reserve Affairs, the Inspector General, the Surgeon General, the Director of Air Force Communications, the Director of Legislative Liaison, the Deputy Chief of Staff for Personnel, the Deputy Assistant Secretary of Equal Opportunity, the Judge Advocate General, the Commander of the AFOSI, the Director of Security Forces, the Deputy Director of Public Affairs, and the Air Force Academy Liaison.

their *Agenda for Change* for the Academy on March 26, 2003. It made changes in cadet and Academy life consistent with the Air Force concepts of no tolerance for sexual assault, training tomorrow's officers to be people of character, and assuring that leadership at all levels would be involved in overseeing and encouraging behavior consistent with the Air Force Core Values of "Integrity First, Service Before Self, and Excellence in All We Do." Since the Working Group's Report describes the system prior to the *Agenda for Change*, the Report identifies those aspects of the existing system that have been or will be affected by the *Agenda for Change*. It is expected that additional measures will be implemented in response to the findings and recommendations in this Report.

In addition to making findings and recommendations, the Working Group identified several issues that it believes should be considered for further study. These were beyond the scope of the Working Group's charter, or beyond the time available in which to examine them, but are worthy of consideration in dealing with the issues as a whole.

Significantly, the Working Group found no systemic acceptance of sexual assault at the Academy, no institutional avoidance of responsibility, or systemic maltreatment of cadets who report sexual assault. Instead, the Working Group found considerable attention to programs intended to avoid incidents of sexual assault and to support victims. However, the Working Group also found that the focus on issues of sexual assault had varied over time and lessened in recent years, and a number of cultural and process matters are problematic. They are discussed below, following a brief description of salient characteristics of the Academy.

The Air Force Academy

Established in 1954, the Academy prepares cadets for careers as officers in the United States Air Force. The total enrollment of the Academy is approximately 4,000 students. The freshman class comprises approximately 1,200 students each year. Women were first admitted in 1976 and now comprise about sixteen percent of the students.

The Superintendent is the commanding officer of the Academy and is responsible for the Athletic Department, the 10th Air Base Wing (which provides support services), and the Dean of Faculty who supervises the Cadet Counseling Center (including Sexual Assault Services). The Commandant of Cadets, who reports to the Superintendent, commands the Training Wing (which includes the Cadet Wing), and supervises the personnel and activities assigned in direct support and administration of the Cadet Wing. Among other things, the Commandant administers the character development programs, professional development programs, and by Academy regulation, though not by historic or recent practice, chairs the Sexual Assault Services Committee at the Academy.

The Cadet Wing is composed of four Cadet Groups, each of which is comprised of nine squadrons of approximately 110 cadets. The Cadet Groups fall under the oversight of the Training Group Commander, an Air Force colonel subordinate to the Commandant. Each squadron is assigned one Air Officer Commanding, an active duty officer, who is responsible for the welfare and professional development of each cadet in the squadron and serves as a role model for the cadets. A rank structure exists among cadets based on class year.²

² This system is sometimes called the fourth-class (or four-degree) system. Freshman cadets are officially "Fourth-Class cadets." Seniors are "First-Class cadets." Following this, sophomores are "Third-Class cadets" and juniors are "Second-Class cadets."

The arrival of women at the Academy required adjustments to the physical accommodations and a psychological shift away from a formerly all male environment. In some ways the acceptance of women has not been complete, as evidenced by harassment of some female cadets by some male cadets that began with the first women and has persisted at some level to the present day. In other ways, women have been very well accepted, meeting fully the expectations for their success as cadets and future officers.

Scope of the Issue

Due to a unique definition of sexual assault and unique procedures in use at the Academy, it is difficult to establish the extent of the sexual assault issue at the Academy. Applying the Academy's expansive definition of sexual assault (and recognizing that sexual assaults are underreported), over the last ten years there have been an average of about fourteen allegations of sexual assault per year (which may include non-criminal conduct and/or non-cadet assailants or victims) involving about 5% of female cadets and less than 1% of male cadets. During the same ten-year period (and included within the fourteen allegations per year) there were an average of about six investigated allegations of sexual assault per year (including an average of two to three rape allegations per year). Three of the total rape allegations were recanted. Analysis of investigated allegations indicates that approximately half of such allegations did not result in evidence sufficient to initiate action under the Uniform Code of Military Justice (UCMJ).

The Academy's Program to Deter and Respond to Incidents of Sexual Assault

The Academy has, since 1993, created and expanded an extensive program to deter and respond to incidents of sexual assault. The program provides training for cadets and other personnel at the Academy intended to prevent sexual assault and to ensure support to victims. It has incorporated dedicated services of victim advocates as part of a Cadet Counseling Center, a Hotline for reporting sexual assault, and cadet volunteers to train fellow cadets (and others) in sexual assault avoidance and response, and to advise victims. Training has included various formal sessions for cadets starting in Basic Cadet Training, squadron training by the cadet volunteers, and a Sexual Assault Awareness Month schedule of activities. By design, the process has been largely victim-controlled and has included the ability to report sexual assaults confidentially. Victim support has included counseling support, legal and investigative support, a victim mutual support group, medical support (including rape protocol arrangements with a local hospital to provide forensic experts who maintain a high level of expertise). The Academy has also carried out a character development program intended, in part, to address gender climate issues.

Concerns with the Academy-Unique Process

Under the Academy's program, virtually all initial reports of sexual assault at the Academy are made to the Cadet Counseling Center or its Hotline and only the information the victim is willing to relate is provided to command. In many instances, the reports to the Cadet Counseling Center and the Hotline have included limited information regarding the assault with no identification of the victim or assailant. By design, the decision whether to pursue an investigation has been largely left to the victim. Command has been provided information and has had the ability to override the wishes of a cadet when the victim's identity has been known within the confidential process and enough information has been provided to warrant such a decision. However, the quality of the information provided to command has been dependent upon those collecting the

information within the confidential process and the individual providing it. Consequently, there may be very little information to act upon to deal with assailants, and delays in cadet decisions to provide information can significantly impair the ability to obtain the evidence necessary to a successful prosecution. This has the result of impairing the Academy leadership's ability to assure justice and to prevent commissioning of cadets who are not fit for military service. Further, the Academy-unique process suggests to cadets that command cannot be trusted to respond appropriately, a concept antithetical to military principles and the training of future military leaders.

The ordinary Air Force process of reporting and handling crimes of sexual assault are quite different. The Air Force-wide system does not provide a confidential forum to report incidents of sexual assault. Instead, victims usually report to their chain of command, to the Air Force Office of Special Investigations (AFOSI, the principal Air Force criminal investigative agency), or to medical personnel. These reports of sexual assault trigger investigative and disciplinary processes, and victim support mechanisms.

Unrealizable and Frustrated Expectations

The Academy-unique definition of sexual assault misstates aspects of the law and can raise unrealistic expectations for prosecution in the minds of victims. By using an expansive definition not linked to specific crimes, with misinformation regarding alcohol impairment on the issue of consent, and a general lack of information regarding consent issues, cadets can be misled regarding the ability of command to respond to their reports. Further, the use of cadets and other non-legal personnel to discuss allegations with victims has the inherent potential for communication of incorrect or incomplete information leading to misperceptions. This has been compounded by difficult fact situations in many of the cases, often involving acquaintances or friends and the use of alcohol. A significant number of cases have involved some consensual sexual activity prior to the alleged assault. For these reasons, and others, whether the victim has consented, or whether the alleged assailant has reasonably believed that to be the case, has often been at issue.

We note that the unique definition of sexual assault has also compounded the difficulty of quantifying criminally cognizable allegations of sexual assault at the Academy, as most reports have been made in the context of the Academy's definition and confidential process without sufficient facts to allow further analysis.

Another aspect of the Academy process that has apparently frustrated victim expectations is a discretionary "amnesty" provision, which provides that cadet victims will "generally not be disciplined" for violations of cadet instructions that may have occurred in connection with an assault (such as alcohol use or unprofessional relationships). The purpose of the amnesty policy is to provide an avenue for victims to come forward to obtain help without fear of discipline for infractions that occurred in connection with the assault. However, the Working Group determined that the amnesty process has not been clearly understood either by cadets or Academy leadership, reducing its effectiveness and creating a sense of unfairness.

Lack of Feedback to Victims and Others

The Working Group found that there has been a lack of feedback about sexual assault cases to cadets and other people at the Academy that has left them largely uninformed about current sexual assault cases. The lack of feedback to alleged sexual assault victims about discipline of offenders may cause some victims to lack trust and confidence in command and in the Academy's

process to respond to allegations of assault. The lack of information has been driven by Privacy Act concerns and certain existing regulations that may be narrower than the law would allow.

Lack of Coordination of Activities and Information

In the Air Force, the Victim and Witness Assistance Program is the means for achieving an interdisciplinary approach to the delivery of services to victims. At the Academy, the primary avenue for coordinating an interdisciplinary approach to sexual assault for cadets has, since 1995, been the Sexual Assault Services Committee. However, neither of the two programs has been functioning as intended at the Academy, nor has either of them effectively engaged all of the entities necessary for full coordination of services to victims. By 2002, the Sexual Assault Services Committee met infrequently with limited participation by its members and had become more of a pro forma activity compared to earlier practices. It was not effectively engaging all the components responsible for deterrence of and response to sexual assault. Similarly, Victim and Witness Assistance Program responsibilities were not being fulfilled through the designated legal office, nor were all the parties responsible for the sexual assault program represented in the overarching program. Consequently, effective coordination of victim requirements across all responsible entities, and advice to victims regarding some of their entitlements, was missing, including consistent advice on the investigative and legal processes.

Academy programs related to sexual assault and sexual harassment have been conducted under different mission areas (the Dean of Faculty, the Commandant and 10th Air Base Wing) and have not been effectively integrated. Part of this has been due to the deliberate separation of the Cadet Counseling Center from the Commandant's organization as part of the confidential reporting process, but the net effect has been diminished coordination on closely related issues. A poor working relationship among the Academy mission elements led to a decline in communication. Coordination among the various components of the Academy, necessary to effectively respond to allegations of sexual assault thus suffered.

Although the Academy has been collecting information on sexual assault in some form or another since before 1993 and has been conducting surveys related to gender climate and other related matters, the usefulness of the results and the adequacy of the surveys were considered questionable and the results were not consistently provided to command. Although the Academy recently initiated measures to improve the survey instruments to assess sexual assault and related matters, at present there are no adequate means of reliably measuring sexual assault or gender climate issues over time; nor are the means in place to reliably compare Academy sexual assault data with other academies, civilian schools, or institutions.

Command Involvement

During the ten-year time period reviewed by the Working Group, Academy leadership had varying degrees of involvement in sexual assault issues, ranging from direct focus on assault processes and cases to indirect focus on issues of character and leadership. Beginning with the development of the Academy's program in 1993, Academy Superintendents have been proactively involved in sexual assault issues, however this direct focus by the Superintendents on sexual assault issues appeared to gradually lessen after 1997, as did that of Commandants, due in part to competing demands. This reduction in focus combined with friction among the Academy's various mission elements, misunderstanding of roles, a discipline environment that was responding to standards of conduct issues and perceived to be harsh, and diminishing activity by the committee

responsible for oversight of sexual assault issues, produced an environment less attentive to victim concerns and factors in Academy life affecting sexual assaults, and which was less capable of a coordinated response to individual cases than in earlier years.

A review of investigated allegations by members of the Working Group's staff team experienced in military justice indicated that the Academy's disposition of cases over the last ten years has generally been within reasonable boundaries of discretion, but also suggests that the Academy community might benefit from greater consideration of the use of formal criminal processes in close cases.

Additional Matters Related to Sexual Assault

While there were extensive programs in effect to educate cadets and faculty about sexual assault avoidance and response, there were also a number of factors in existence that detracted from the message. Sexual assault training did little to emphasize good character as a key aspect of deterrence, and the timing of some training, which took place when cadets were overwhelmed, may have been problematic.

Significantly, there exists a tendency for cadets to place loyalty to peers above loyalty to values, which contributed to a tolerance of behaviors that can lead to sexual assault (such as underage drinking) and in some instances to a failure to report sexual assault.

Fear of discipline and its effects on cadets' careers, peer ridicule, ostracism and reprisal, loss of privacy and loss of reputation are factors bearing on cadets' reluctance to report sexual assault.

In addition, the cadet authority structure, beginning in Basic Cadet Training (which takes place in the summer before the freshman year), establishes a disparity of power among cadets that can make subordinate cadets (particularly Fourth-Class cadets, or freshmen), more vulnerable to upperclass cadets who might abuse their authority. This was underscored by the fact that 53% of the investigated cadet-on-cadet allegations we examined involved Fourth-Class cadet victims, while Fourth-Class cadets represent only 29% of the cadet population.

Perceptions have existed among some cadets that criminal investigators are unfriendly to victims, a perception that may have been inadvertently contributed to by the Cadet Counseling Center personnel and cadet volunteers. This perception may have led some victims to avoid the investigative process.

We found indicators that a climate among cadets of inappropriate, gender-based comments about women, off-color jokes and some other forms of sexual harassment persists at the Academy. Neither the actual extent and severity of the problem, nor its connection to sexual assault, is reliably known. Improved gender climate/sexual harassment surveys are needed at the Academy to reliably assess the nature and extent of these behaviors.

Understanding that sexual assault in the Academy environment represents a failure of character and often of cadet leadership responsibilities, we noted that the Academy does not include leadership classes as a mandatory academic area, nor is attendance at the Academy's Center for Character Development programs a requirement for graduation or commissioning. Further, while a study of methods for measuring character development has begun at the Academy, there is currently no process to reliably measure character development.

Our review found that 55% of the cadet-on-cadet investigated allegations involved incidents in the dormitories. We also observed that women's dormitory rooms have been intermingled with men's rooms in their squadron dormitory areas, although this is not consistent with Air Force housing regulations or practice. Further, women's bathrooms have been at a distance from many of the women's rooms causing them to have to travel the halls for some distance in robes or athletic attire. We also found that until January 2003, officer and noncommissioned officer presence in the dormitories at night was not extensive. Since that time, however, arrangements have been made to provide significant officer and noncommissioned officer presence throughout nighttime hours.

The Working Group found that alcohol use was a significant factor in the incidence of sexual assault and was present in 40% of the cadet-on-cadet investigated allegations.

We found that there are few female role models for cadets in the Training Group and there is also a lack of emphasis on female support and mentoring that could provide resources to female cadets, especially the Fourth-Class female cadets who may need it most.

Conclusion

The Working Group found no systemic acceptance of sexual assault at the Academy, institutional avoidance of responsibility, or systemic maltreatment of cadets who report sexual assault. Instead, the Working Group found considerable attention to programs intended to encourage reporting, avoid incidents of sexual assault and support victims. However, the Working Group also found the focus on sexual assault issues had varied over time and lessened in recent years, and a number of culture and process matters are problematic. Collectively, they produced a less than optimal environment to deter and respond to sexual assault or bring assailants to justice. They demonstrate work that needs to be done to ensure that victim support and institutional values are consistently addressed.

Recommendations

The Working Group has made a series of recommendations in the Report. Some are listed briefly below. The Secretary and Chief of Staff of the Air Force have already addressed many in the *Agenda for Change*, in whole or in part, and those are noted with an asterisk.

- Conform Academy definitions, policy and processes to Air Force definitions, policy and processes with sexual assaults immediately reported to command. *
- Effectively integrate all Academy agencies charged with responding to sexual assault, beginning at the time of report, (including a "First Responder Team") using the Air Force Victim and Witness Assistance Program as the overarching process. *
- Provide extensive training in sexual assault matters, including victim psychology, psychological profiles of offenders, predatory behaviors, victim support and advocacy to responders.

- Involve the command structure directly and closely in victim support and protect the privacy of victims. Preserve positive aspects of the Academy's program consistent with the *Agenda for Change* and the law. *
- In all reported cases of sexual assault, provide assured amnesty to victims and others consistent with the concepts in the *Agenda for Change*. *
- Increase the frequency and effectiveness of sexual assault deterrence training, emphasizing small groups, cadet participation, and a focus on character, including the ethical use of power. *
- Reevaluate the *Agenda for Change* decision to use Academy medical resources to provide rape protocols. While keeping Academy medical personnel involved in patient care, integrate them with the specialized rape protocol services at Memorial Hospital.
- Provide feedback to victims of sexual assault and Academy personnel on case dispositions to the maximum extent allowed by law. *
- Evaluate current standards regarding the use of alcohol. Take appropriate action to deter alcohol violations, particularly regarding misuse of alcohol and underage drinking. *
- Aggressively employ all means available to eliminate sexual harassment and gender bias. *
- Reinforce, repeatedly, the importance of loyalty to values over loyalty to peers. *
- Engage cadet leadership in planning and executing measures to build and institutionalize loyalty to values above peers, and to assure victim support free of fear of peer reprisal.
- Reevaluate the cadet rank structure and the fourth-class system to reduce the potential for abuse of subordinate cadets. *
- Establish formal support structures for Fourth-Class cadets including mentoring opportunities.*
- Make leadership classes part of the mandatory academic curriculum of the Academy, and make successful participation in character development programs graduation and commissioning requirements. Establish effective mechanisms to assess the progress of character development. *
- Adjust dormitory room assignments to enhance mutual support of female members, particularly Fourth-Class female cadets (freshmen), while preserving squadron integrity. *
- Ensure continued nighttime officer and noncommissioned officer leadership, oversight and supervision in the dormitories. *
- Implement highly selective assignment processes for Air Officers Commanding and enhance training for them to provide the best leadership and role models for cadets. Reinstate the Masters program for AOCs. *

- Consider appropriate measures to provide increased opportunities for role modeling of successful female officers for the benefit of male and female cadets. *
- Establish effective mechanisms by which Academy and Air Force leadership can measure and monitor sexual assault and related gender climate trends and validly compare them to relevant organizations. Provide statistics to the Secretary of the Air Force and the Chief of Staff annually.
- Make use of standard Air Force Unit Climate Assessment tools within the Academy's Training Wing, including cadets, to provide comparative data and insights to command.

Other recommendations, including areas recommended for further study, can be found in the Report.

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I. Introduction

A. The Secretary's Charter

On January 2, 2003, Dr. James G. Roche, the Secretary of the Air Force, received an e-mail directed initially to female cadets and asserting that there was a significant sexual assault problem at the United States Air Force Academy³ that had been ignored by the Academy's leadership.⁴ Upon receipt of the e-mail, Secretary Roche immediately directed Mary L. Walker, the General Counsel of the Air Force, to "establish a high-level working group⁵ to review cadet complaints concerning the Academy's program of deterrence and response to sexual assaults."⁶

Secretary Roche tasked the Working Group to review cadet complaints and cases of sexual assault that had been reported from January 1993 to December 2002 and to evaluate whether the Academy's policies, programs and practices "to deter or respond to sexual assault [have]... functioned appropriately" and provide recommendations for change.⁷ In doing so, the Working Group was to keep in mind both "the goal of the Academy to develop leaders of character for tomorrow's Air Force, and ordinary Air Force processes."⁸

B. The Working Group's Investigation

The Working Group received briefings, reviewed pertinent information, and dispatched a staff team to the Academy to gather facts and interview those with knowledge of the program's history and its practices.⁹ The Working Group also consulted with various experts in the Air Force including those in the areas of victim psychology, sexual assault and statistics.

The Working Group attempted to contact cadet victims¹⁰, including the cadets who had written the January 2, 2003 e-mail.¹¹ To allow for contact from cadet victims, the Working Group

³ Throughout this Report the United States Air Force Academy is referred to as the Academy. In some attachments, the Academy is also referred to as USAFA, and the AFA.

⁴ E-mail from Renee Trindle to Dr. James G. Roche, Secretary of the Air Force, Exhibit 1. "Renee Trindle" is a pseudonym. In addition to Dr. Roche, the e-mail was sent to General John Jumper, Chief of Staff of the Air Force, Sen. Wayne Allard, Sen. Ben Campbell, other US Congressmen, and two media representatives. The e-mail was also sent out earlier to numerous others under the pseudonym "John Smith." E-Mail from John Smith, December 13, 2002, Exhibit 2. The author also provided advice to female cadets at the Air Force Academy on how to deal with the issues of sexual assault.

⁵ The Working Group consisted of the General Counsel (chair), the Assistant Secretary for Manpower and Reserve Affairs, the Inspector General, the Surgeon General, the Director of Air Force Communications, the Director of Legislative Liaison, the Deputy Chief of Staff for Personnel, the Deputy Assistant Secretary for Equal Opportunity, the Judge Advocate General, the Commander of the AFOSI, the Director of Security Forces, the Deputy Director of Public Affairs, and the Air Force Academy Liaison.

⁶ SECAF Guidance for the General Counsel and Working Group, Exhibit 3. *See* this Report, Section III.B., The Academy's Definition of Sexual Assault, for discussion of the Academy's definition of sexual assault.

⁷ SECAF Guidance for the General Counsel and Working Group, Exhibit 3.

⁸ *Id.*

⁹ Unless otherwise noted, this Report reflects conditions at the Academy as of March 25, 2003, *United States Air Force Academy: Agenda for Change*, March 26, 2003, Exhibit 4.

¹⁰ Throughout the report, the terms "victim" and "alleged victim" are used. No legal significance should be attached to the use of either term. Nothing in this report can be taken as an adjudication of either victimization or culpability.

established phone numbers and an e-mail address for present and former cadets to report previously unreported allegations.¹² A separate telephone number was provided for victims to reach the Air Force Inspector General's office directly. Points of contact, including a toll-free number, were provided to Congressional and other offices that indicated they were in contact with victims so they could reach the Working Group. In addition to cadet complaints provided directly to the Working Group, complaints surfaced in a variety of media. Some cadets contacted their Congressional representatives (including at least one who apparently participated in drafting the e-mail and was interviewed by the Working Group). Some appeared on nationally televised news programs and others spoke with the print media.

The Working Group recommended that complaints pertaining to specific allegations of sexual assault should be referred to the Air Force Inspector General to ensure complaints were fully reviewed and cases were evaluated. The Secretary directed this be done. As the Inspector General's investigations regarding specific cases were conducted concurrent with the Working Group's examination (and in some cases are ongoing as of this Report), the Working Group focused on processes. The results of the Inspector General's efforts, and those of others reviewing the issues, may provide additional information.

On March 19, 2003, the General Counsel sent the Secretary and Chief of Staff a memorandum with preliminary findings.¹³ Based in part on this interim report, the Secretary and the Chief of Staff announced the *Agenda for Change* at the Academy.¹⁴ This document directs a number of changes at the Academy. As certain aspects of the *Agenda for Change* were implemented prior to the completion of this Report, we have noted areas that have been, or will be, affected by the *Agenda for Change*. It is expected that further study as well as further action will be achieved by the new Academy leadership in response to this Report.

The Report first discusses relevant Academy history and background information, then analyzes the Academy's program to deter and respond to sexual assault in light of the cadet complaints. This analysis is followed by a discussion of several factors related to deterrence of and response to sexual assault at the Academy. The Report then comments on a variety of other issues of relevance. The final area of discussion pertains to Academy leadership issues. The Report ends with findings and conclusions, recommendations and areas recommended for further study.

¹¹ Also known as the "John Smith" e-mail. Members of the General Counsel's office responded to the e-mail seeking further information and, although the names and e-mail address were fictitious, were successful in making contact with, and interviewing, at least one alleged cadet victim who participated in its creation.

¹² While at the Academy, the staff team of the Working Group also established a number for cadets to call to arrange interviews with members of the staff team. During the course of its investigation, over 230 individual interviews (including interviews of victims, and with current and former cadets) were conducted, as well as focus group interviews (as opposed to individual interviews) with over seventy other cadets.

¹³ Memorandum from the General Counsel to the Secretary of the Air Force and the Chief of Staff, Re: the General Counsel's Working Group's Preliminary Findings, March 19, 2003, Exhibit 5.

¹⁴ *Agenda for Change*, Exhibit 4.

II. Academy History, Mission and Structure

A. Academy Mission and Organizational Structure

Established in 1954, the Academy prepares cadets for careers as Air Force officers. The Academy is located against the eastern slope of the Rocky Mountains, eight miles north of Colorado Springs, Colorado and fifty-five miles south of Denver, Colorado.¹⁵ The mission of the United States Air Force Academy is “to develop and inspire air and space leaders with vision for tomorrow.”¹⁶

The President appoints cadets to the Academy.¹⁷ Appointments are controlled by geographic, political and military end-strength limitations.¹⁸ The total enrollment is approximately 4,000. About 1,200 Fourth-Class cadets (freshmen) are drawn from an application pool of approximately 9,000.¹⁹ To be selected for admission, applicants must exhibit proven excellence in academics, leadership and athletics. Students come from all fifty states and from several foreign countries.²⁰ Women were first admitted in 1976²¹ and currently comprise approximately sixteen percent of the cadet population.²²

At present there are more than 500 military and civilian instructors and several visiting professors from around the nation teaching at the Academy. Exchange officers from the other U.S. services, and several foreign countries, are also part of the faculty. Each member of the faculty holds a masters degree and about fifty percent of the faculty hold doctorate degrees.²³

B. Leadership Structure

The Secretary of the Air Force prescribes the Academy’s organization,²⁴ however, 10 U.S.C. § 9331b, requires the following six positions:

1. Superintendent
2. Dean of the Faculty
3. Commandant of Cadets
4. Twenty-one Permanent Professors

¹⁵ UNITED STATES AIR FORCE ACADEMY CATALOG, profile page (2002-2003 ed.), Exhibit 6.

¹⁶ United States Air Force Academy Instruction 36-173, Organization of the USAF Academy Program for Air Force Cadets, ¶ 1 (August 11, 1997) [hereinafter USAFA Instruction 36-173].

¹⁷ 10 U.S.C. § 9341a.

¹⁸ 10 U.S.C. § 9342. The law requires potential students be nominated to attend the Academy and establishes different nomination categories. For example, the President, Vice President, Senators and Congressional Representatives all nominate cadets for appointment to the Academy. Selection categories also include a specific number of appointments from other groups like children of deceased or disabled veterans, children of members of the reserve and active duty forces, enlisted members, cadets from AFROTC detachments or junior AFROTC, and international students. *Id.*

¹⁹ Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7, at 5.

²⁰ UNITED STATES AIR FORCE ACADEMY CATALOG, at 4 (2002-2003 ed.), Exhibit 6.

²¹ See this Report, Section II.F., Women at the Academy.

²² E-mail, Re: Data, Percentage of Female Cadets, Exhibit 386.

²³ UNITED STATES AIR FORCE ACADEMY CATALOG, profile page (2002-2003 ed.), Exhibit 6.

²⁴ 10 U.S.C. § 9331a.

5. Chaplain
6. Director of Admissions

The Superintendent reports to the Chief of Staff of the Air Force and is the commanding officer of the Academy and of its military post.²⁵ His duties include administering the cadet personnel system, and through the Command Staff Judge Advocate, providing legal oversight for cadet disenrollment procedures.²⁶

The Commandant of Cadets commands the 34th Training Wing, which includes the Cadet Wing and the personnel and activities assigned in direct support and administration of the Cadet Wing.²⁷ The Commandant reports directly to the Superintendent and administers the military art and science curriculum, the professional development program, the airmanship and aviation programs, the character development programs, and the resource management programs.²⁸

Permanent professors are Air Force officers who generally are highly qualified in one or more disciplines. Permanent professors normally have earned a doctorate or professional degree in an academic field and have demonstrated competence in their scholarly pursuits.²⁹

C. Cadet Wing Structure

The Cadet Wing is composed of all the cadets at the Academy and is led by the Cadet Wing Commander, a cadet in his or her fourth year at the Academy. The Cadet Wing is divided into four Cadet Groups, each of which is comprised of nine squadrons of approximately 110 cadets.³⁰

The Commander of the 34th Training Group, a colonel who reports to the Commandant, oversees all four cadet groups and is responsible for cadet discipline and policy.

One active duty officer is assigned to each Cadet Squadron and Group as an Air Officer Commanding (AOC), for a total of thirty-six Squadron AOCs and four Group AOCs. Each AOC is responsible for the welfare and professional development of his or her cadet subordinates. A noncommissioned officer (NCO), who serves as a Military Training Leader (MTL), assists each squadron AOC.

²⁵ 10 U.S.C. § 9334.

²⁶ USAFA Instruction 36-173, ¶ 3.1. In addition, the Superintendent serves as a general court-martial convening authority. *See* Department of the Air Force, Special Order GA-001, Court Martial Convening Authorities, ¶ 2 (October 8, 2002), Exhibit 8.

²⁷ The 34th Training Wing includes the following subordinate organizations: the 34th Training Group (responsible for operations of the Cadet Wing and for cadet military training), the 34th Education Group (responsible for Military Art, Science and Aviation courses), the 34th Operations Group (directs air operations at the Academy), the Center for Character Development, a Support Division, and a Safety Office. *See* Organization and Function Chartbook, at 27-36, Exhibit 9; and Statement of Brig Gen Gilbert, Exhibit 10, at 20.

²⁸ USAFA Instruction 36-173, ¶ 3.3.

²⁹ United States Air Force Academy Instruction 36-151, Permanent Professors, ¶ 2 (March 20, 2000) [hereinafter USAFA Instruction 36-151]. Permanent professors are appointed by the President, with advice and consent of the Senate and have certain grade and longevity privileges, however, the Secretary of the Air Force may exercise certain authority concerning their review and tenure. In addition to these positions, the Secretary of the Air Force may designate other professors. *See* 10 U.S.C. Chapter 903.

³⁰ Appendix E of this Report contains organizational charts for the Academy's leadership structure, including the Cadet Wing.

The duties of the AOCs are delineated in 34th Training Group Operating Instruction 36-12. Pursuant to the Instruction, a principal duty of the AOC is to serve as the “primary role model and mentor in the formation of cadet leadership skills and professional qualities.”³¹ It is, therefore, important that these officers have appropriate qualifications, experience and maturity to fulfill this role. AOCs and MTLs are the permanent party oversight of the “cadet leadership laboratory.”³² AOCs are also charged with the overall safety of their squadrons,³³ and are responsible for counseling cadets on any personal problems cadets might have (from “boyfriend-girlfriend” problems to financial difficulties). To fulfill this responsibility, AOCs are required to be knowledgeable of assistance agencies available for cadets.³⁴ AOCs are also responsible for ensuring that human relations training is emphasized among cadets, and for permitting only professional training, that is, training that does not violate the personal rights of any cadet, to take place within the Cadet Wing.³⁵

D. Cadet Rank Structure

In addition to the hierarchical structure of the Cadet Wing, the cadets also have status, based upon their class year. Freshmen cadets are called “Fourth-Class cadets” or “C4Cs,” with each succeeding class known as “Third-Class cadets” or “C3Cs,” “Second-Class cadets” or “C2Cs,” finishing with the seniors who are known as “First-Class cadets,” “C1Cs,” or “Firsties.”

At the bottom of the Academy rank structure, Fourth-Class cadets are in a unique status from the time they enter Basic Cadet Training (BCT) at the Academy in June prior to their first year until “Recognition,” which occurs in the Spring of their first year. During this time, Fourth-Class cadets are counseled, corrected and disciplined by cadets from the other three classes.³⁶ Fourth-Class cadets are restricted as to where they may go in the Academy, how they may walk (at double-time along the marble strips of the Terrazzo),³⁷ and what luxury items they may possess.³⁸ The manner in which Fourth-Class cadets interact with other cadets and officers is referred to as the fourth-class system.³⁹

E. Cadet Officer Training Program

Each cadet begins his or her Academy experience by attending Basic Cadet Training (BCT), which takes place in the summer months immediately before the first academic year. BCT is a

³¹ 34th Training Group Operating Instruction 36-12, Officers and Enlisted Personnel Duties and Responsibilities, ¶ 5.1, Exhibit 11.

³² *Id.* at ¶ 5.2.4.

³³ *Id.* at ¶ 5.2.3.2.

³⁴ *Id.* at ¶ 5.2.7.2.

³⁵ *Id.* at ¶ 5.2.9.

³⁶ This practice will be modified by the Secretary and the Chief of Staff’s *Agenda for Change*. From now on, up until Thanksgiving of the first academic year, only First-Class cadets will be allowed to discipline Fourth-Class cadets. After that, some Second-Class cadets will have some training responsibilities towards Fourth-Class cadets. Third-Class cadets will be allowed to mentor or tutor Fourth-Class cadets, or provide them on-the-spot corrections. The exercise of discipline by a Third-Class cadet over a Fourth-Class cadet will always be governed by a First-Class cadet. *Agenda for Change*, Exhibit 4.

³⁷ The Terrazzo is the common area in the center of the cadet complex at the Academy.

³⁸ See AF Cadet Wing Instruction 36-2909, Conduct Standards, ¶ 3.16, Exhibit 12; AF Cadet Wing Instruction 34-601, Dormitory Standards, ¶ 4.3, Exhibit 13.

³⁹ See “What is the Fourth-Class System?,” Exhibit 126.

rigorous orientation program that introduces cadets to the strict discipline and team-building they will encounter over their four years at the Academy.⁴⁰

The Academy's training focuses on four broad areas. These "pillars" are: professional military training, academics, athletics and character development.⁴¹

Professional military training focuses on the profession of arms and covers a broad range of topics aimed at preparing the cadets for military service. The curriculum covers such topics as officership, the art of war, military theory, and operations and doctrine.

The academic program begins with a core curriculum, which consists of courses in the basic and engineering sciences, social sciences, humanities, and military strategic studies. Cadets then may focus their advanced studies on one of thirty majors, including such areas as aeronautical engineering, behavioral sciences, civil engineering, economics, history, mathematical sciences, physics or space operations. Graduates of the Academy receive the Bachelor of Science (B.S.) degree.⁴²

Air Force Academy athletic programs include physical education, intramural sports, and intercollegiate athletics. These programs are intended to develop characteristics associated with military leadership.

Character development is intended to be an essential part of the cadet's professional growth. Its foundation includes the Academy Honor Code and the three Core Values of the Air Force: *Integrity First*, *Service Before Self*, and *Excellence in All We Do*.

F. Women at the Academy

1. Arrival of Women

From the inception of the Academy in 1954 until 1976, the Academy admitted only men.⁴³ When women were first admitted to the Academy in 1976,⁴⁴ certain changes were required to

⁴⁰ UNITED STATES AIR FORCE ACADEMY CATALOG, at 4 (2002-2003 ed.), Exhibit 6. When speaking to senior-ranking cadets, and unless directed otherwise, cadets in BCT are entitled to give only seven basic responses: yes, Sir/Ma'am; no, Sir/Ma'am; no excuse, Sir/Ma'am; Sir/Ma'am, may I make a statement?; Sir/Ma'am, may I ask a question?; Sir/Ma'am, I do not understand; and Sir/Ma'am, I do not know.

⁴¹ *Id.*

⁴² *Id.* at profile page.

⁴³ For a discussion of the history of women in the United States service academies, and the efforts to gain admission of women, see THE WOMEN'S ARMY CORPS, 1945-1978, Bettie J. Morden, 1990, at 318-23, available at <http://www.army.mil/cmh-pg/books/wac/>.

⁴⁴ On October 7, 1975, President Gerald R. Ford signed a law requiring that all military service secretaries "take such action as may be necessary and appropriate to insure that (1) female individuals shall be eligible for appointment and admission to the service academy concerned, beginning with appointments to such academy for the class beginning in calendar year 1976, and (2) the academic and other relevant standards required for appointment, admission, training, graduation, and commissioning of female individuals shall be the same as those required for male individuals, except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals." Department of Defense Appropriation Authorization Act, 1976, Public Law 94-106, October 7, 1975. For the law governing appointment of cadets to the Air Force Academy, see 10 U.S.C. § 9342. One hundred fifty-seven women and 1,436 men entered the Air Force Academy in 1976 as part of the Class of 1980. Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7, at 2. Of those entering, ninety-seven women (62%) and 802 men (56%) graduated in 1980. *Id.* at 38.

accommodate the combined male and female cadet population. For example, the physical structure and operation of the Academy had been designed for a single-gender cadet population, so restroom, showering, and living facilities were divided up and modified to accommodate both genders. Although all women were assigned to squadrons of mixed gender, initially all female cadets lived in one area of one dormitory, separated from their male squadron mates.⁴⁵ In the spring of 1977, however, female cadets were moved to rooms located within their squadron areas but still congregated together near the women's bathrooms.⁴⁶ The practice of locating women in the dorms with their squadrons is a practice that is still maintained, however, they are now interspersed among the men's rooms and not clustered near the women's bathrooms.⁴⁷

2. Treatment and Support of Women

The arrival of female cadets ushered in more than just formal institutional changes. While some men welcomed the addition of women to the cadet population, others adamantly opposed their presence.⁴⁸ Some male cadets had a perception that women were held to lower standards than men, or ridiculed women if they could not meet the same physical standards as men.⁴⁹ Some women felt like they were in a "fish bowl," where each female cadet's every move was scrutinized and reflected on female cadets as a group.⁵⁰ Some female cadets interviewed also report comments from some male cadets that women do not belong at the Academy.⁵¹ Other current female cadets interviewed, however, said that they have encountered no such comments and do not experience the same feelings.⁵²

In a 1994 GAO study on the DoD Service Academies, 59% of female students at the Air Force Academy reported experiencing one or more forms of harassment on a recurring basis.⁵³ An alumna from the 1993-94 timeframe, was told by male cadets that women were looking for their "Mrs. Degree," implying that they were only at the Academy to find a husband.⁵⁴ The same alumna stated that women experienced ridicule for not being able to perform to the same physical standards as the male cadets.⁵⁵ The immediate past Training Group Commander, Col Slavec, is an alumna of the first class of women to graduate from the Academy. Her recollection is of "really smart, [brilliant] women" being treated unmercifully because they could not meet the physical fitness standards, specifically running.⁵⁶ However, Col Slavec's view was that the harassment was "performance based" rather than gender based, that cadets merely picked on weaker cadets. She

⁴⁵ Statement of Female Academy Graduate, Exhibit 14, at 2.

⁴⁶ *Id.*

⁴⁷ Memorandum for Record, Interview with Group Superintendent, Exhibit 15.

⁴⁸ Statement of Female Academy Graduate, Exhibit 14, at 1.

⁴⁹ *Id.* at 2; Statement of Vice Commandant (1995-1998), Exhibit 46, at 7.

⁵⁰ Statement of Female Academy Graduate, Exhibit 14, at 1.

⁵¹ Memorandum for Record, Group Interview with Female Cadets, Exhibit 56 (stating that comments are made to women such as "girls are ruining the AF"); Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 57 (stating female cadet was told "girls don't belong here").

⁵² Memorandum for Record, Interview of Female Fourth-Class cadet, Exhibit 18; Statement of Female First-Class cadet, Exhibit 19, at 2.

⁵³ GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21, at 20. *See also* Section III.I., Social Climate Surveys. In a 1995 study, the GAO reported that seventy-eight percent of female cadets at the Academy reported experiencing at least one form of sexual harassment on a recurring basis in academic year 1993-94. GAO Report, DoD Service Academies, Update on Extent of Sexual Harassment (March 1995), Exhibit 22, at 8.

⁵⁴ Statement of Anonymous Former Cadet, Exhibit 391, at 8.

⁵⁵ *Id.*

⁵⁶ Statement of Col Slavec, Commander, 34th Training Group, Exhibit 23, at 34.

acknowledges this performance-based harassment currently exists at the Academy.⁵⁷ Some cadets currently at the Academy who were interviewed said that sexual harassment is commonplace.⁵⁸ Some faculty and staff share that view.⁵⁹

Formal and informal efforts to support female cadets have had varying levels of success over the years. Attention of all kinds focused on women after they were first admitted to the Academy and precipitated tight bonds among them as they tried to cope with their newcomer status.⁶⁰ Since 1976, several attempts have been made to establish networking groups for female cadets.⁶¹ Most of these efforts were initiated by Academy staff and most faded over time with changes in personnel.⁶² In 1993, then Superintendent Hosmer observed that women had, by that time, fit in well and one indication was their success as a group, both academically and in survival/POW training.⁶³ In 1994, the Academy hosted a Women in Leadership Symposium, which met with mixed reviews from the women: some applauded what they saw as an overdue effort to openly address women's issues, while other women did not appreciate the way such gatherings singled them out as women,⁶⁴ a sentiment that continues among some female cadets today.⁶⁵ In 2002, a group of Third-Class female cadets organized "Babes in Blue," a networking organization focused on the conflicts that arise for women among career, family, and relationships.⁶⁶

3. Performance of Women Over Time

Statistical data on cadet admissions, performance, and post-graduation assignments by gender at the Academy dates back to the Class of 1980.⁶⁷ In the area of admissions, over the years, the Scholastic Aptitude Test (SAT) scores of incoming men and women have been roughly equal, on average, with women consistently scoring slightly higher on the verbal portion of the test and men consistently scoring slightly higher on the mathematics portion.⁶⁸ Men entering the Academy

⁵⁷ *Id.*

⁵⁸ Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24; Memorandum for Record, Group Interview with Cadet Wing Leaders, Exhibit 25.

⁵⁹ See Statement of Faculty Member, Exhibit 26, at 3; Memorandum for Record, Interview with Officer from Counseling Center, Exhibit 27, at 2; Memorandum for Record, Interview with Male Faculty Member, Exhibit 28; Statement of Staff Psychiatrist, 10th Medical Group/Life Skills Center, Exhibit 29, at 7; Statement of Chaplain, 10th Air Base Wing, Exhibit 30, at 5; Statement of Female TSgt, Military Training Leader, Exhibit 31, at 5; Statement of Female Group Chaplain, Exhibit 32, at 3; Statement of Director, Cadet Counseling Center, Exhibit 33, at 13 (all stating a high tolerance of sexual harassment among cadets); *but see* Statement of Male Squadron Air Officer Commanding (AOC), Exhibit 34; Statement of Male Squadron AOC, Exhibit 35, at 6; Statement of Male Squadron AOC, Exhibit 36, at 4; Memorandum for Record, Interview of Female First-Class cadet, Exhibit 19; Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37, at 2; Memorandum for Record, Interview of Male Fourth-Class cadet, Exhibit 38, at 2 (all stating there is not a sexual harassment problem); Statement of Female Military Training Leader, Exhibit 39, at 3 (stating that she does not believe there is an air of sexual harassment, but that neither is she [at the Academy] at midnight).

⁶⁰ Statement of Female Academy Graduate, Exhibit 14, at 1; Statement of Col Slavec, Commander, 34th Training Group, Exhibit 23, at 113.

⁶¹ Talking Paper on Academy Women's Networking Group ("Babes in Blue"), Exhibit 40.

⁶² *Id.*

⁶³ Statement of Lt Gen Hosmer, Former Superintendent, Exhibit 45, at 4-6.

⁶⁴ *Id.*

⁶⁵ Statement of Col Slavec, Exhibit 23, at 112-113.

⁶⁶ Talking Paper on USAFA Women's Networking Group ("Babes in Blue"), Exhibit 40.

⁶⁷ See Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7. This data also includes various admissions statistics.

⁶⁸ *Id.* at 7-9.

have qualified medically for pilot and navigator positions at a rate consistently about twenty-five percent higher than women.⁶⁹

The Academy tracks attrition, leadership selection, and cadet academic performance by gender. Three attrition rates tracked by graduating class at the Academy are entry-level losses during Basic Cadet Training (BCT), losses after BCT but during the Fourth-Class (freshman) year, and overall losses between BCT completion and graduation. Many years have shown BCT loss rates higher for women than men, but the BCT loss rates by gender have been converging considerably for the Classes of 2003-2005.⁷⁰ Post-BCT attrition during the Fourth-Class year has been largely equal for men and women since the Class of 1984.⁷¹ Overall post-BCT losses were consistently higher among women until the Class of 1993, after which the overall loss rate has been slightly higher among men for all but two classes.⁷² A small number of cadets are selected by active duty and cadet leaders for leadership positions in the Cadet Wing each semester.⁷³ This small number, combined with the relatively small number of female cadets, produces widely varying gender percentages in cadet leadership selection.⁷⁴ In general, female cadets are chosen near or above their overall proportion to the cadet population for squadron, group, and wing staff positions, but consistently below their overall proportion for squadron commander positions.⁷⁵ In terms of grade point average, since the early 1980s, the academic performance of male cadets is generally slightly higher than that of female cadets for the Fourth-Class (freshman) year and the first semester of the Third Class (sophomore) year.⁷⁶ Since the early 1990s, grades for female cadets have been slightly higher the first semester of the Second-Class (junior) year.⁷⁷ In the same time frame, the grades of First-Class (senior) female cadets have consistently been equal to or slightly higher than the grades of male cadets.⁷⁸

Graduation statistics reflect variances among the genders. In only four classes throughout the 1980s and 1990s did female cadets graduate at a higher rate than male cadets.⁷⁹ In the Classes of 2000 and 2001, female cadets graduated at a higher rate than males.⁸⁰ As long as women have attended the Academy, they have qualified medically at graduation for pilot and navigator positions. The average rate of female cadets who qualify is, on average, thirty percent lower than the rate for male cadets.⁸¹ In the area of majors awarded, female cadets achieve social sciences, basic sciences, humanities, and interdisciplinary degrees at rates higher than men.⁸² In the two remaining categories (engineering and basic academics), men are awarded degrees at rates higher than women.⁸³ Men have been awarded engineering degrees at twice the rate of women.⁸⁴

⁶⁹ *Id.* at 12-13.

⁷⁰ *Id.* at 17-23.

⁷¹ *Id.*

⁷² *Id.* BCT losses were twice as high or higher for women in 1984, 1989, 1995, 1997 and 1999.

⁷³ *Id.* at 24-27. Cadets apply for leadership positions within the Cadet Wing. Statement of First-Class cadet, Exhibit 41, at 1.

⁷⁴ Statistical Summaries of USAFA Cadets & Graduates, March 2002, Exhibit 7, at 24-27.

⁷⁵ *Id.*

⁷⁶ *Id.* at 28-31. Since 2001, however, academic performance of females has been slightly higher than the performance of males in the first semester of the third class year. *Id.*

⁷⁷ *Id.* at 30-31.

⁷⁸ *Id.*

⁷⁹ *Id.* at 38-41.

⁸⁰ *Id.* at 40-41.

⁸¹ *Id.* at 38-41. Approximately twenty-five percent of females and nearly sixty percent of males complete aeronautical training and achieve aeronautical ratings. *Id.* at 49-54.

⁸² *Id.* at 42-44.

⁸³ *Id.* Basic Academics changed to Bachelor of Science with the Class of 1991.

III. The Academy's Program to Deter and Respond to Incidents of Sexual Assault

A. The 1993 Sexual Assault Program and Its Evolution

1. January 1993 through June 1994

Reported cases of sexual assault did not become a prominent issue at the Academy until the early 1990s.⁸⁵ Following an alleged sexual assault in February 1993, the Academy introduced a program for deterring and responding to reports of sexual assault.⁸⁶ Desiring to provide a victim-friendly program that would encourage reporting,⁸⁷ the Academy developed a program that is different in both organization and process from that employed in the rest of the Air Force. The sexual assault program introduced in 1993 was formalized by an Academy instruction in 1997⁸⁸ and has remained substantially unchanged until adoption of the *Agenda for Change* in March 2003.

In early 1993, a female cadet reported that she was sexually assaulted near the Academy gymnasium.⁸⁹ The Superintendent at the time, Lieutenant General Bradley C. Hosmer, initiated an Air Force Office of Special Investigations (AFOSI) criminal investigation into the case.⁹⁰ The Superintendent also reached out to the cadet population to find out the pervasiveness of the sexual assault problem at the Academy.⁹¹ Lieutenant General Hosmer called a meeting with all of the female cadets in order to gain a better understanding of the problem. He started the meeting by removing his rank insignia and telling the female cadets, "I'm here as somebody who needs to know the ground truth."⁹² He distributed a questionnaire and engaged in a discussion with the cadets about their experiences and perceptions related to sexual harassment and sexual assault. The meeting confirmed to Lt Gen Hosmer that the problem was significantly greater than he previously suspected.⁹³

⁸⁴ *Id.*

⁸⁵ According to one retired female officer, there were no reported sexual assaults of which she was aware during her three-year tour as an AOC at the Academy from 1984 to 1987. Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 9. *See also* Statement of Female Academy Graduate, Exhibit 14, at 2; Statement of Lt Gen Hosmer, Exhibit 45, at 10-11; Background Paper on USAFA Assault Response and Education Program, Exhibit 42, at 1.

⁸⁶ Statement of Lt Gen Hosmer, Exhibit 45, at 11-12; *see also* GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43, at 49-50. The GAO Report referenced a sexual assault allegation that prompted the Superintendent to conduct an inquiry into whether the incident "represented an isolated event" or whether it was a "symptom of broader more underlying problems." *Id.* Lieutenant General Hosmer stated that he was aware that sexual assault incidents had occurred prior to 1993, but that the issue did not come to the forefront until the alleged incident in early 1993. Statement of Lt Gen Hosmer, Exhibit 45, at 11.

⁸⁷ Statement of Lt Gen Hosmer, Exhibit 45, at 15, 17-18.

⁸⁸ USAFA Instruction 51-201, Cadet Victim/Witness Assistance and Notification Procedures, (July 15, 1997), Exhibit 86; *see also* Background Paper on USAFA Sexual Assaults, Exhibit 385, at 2.

⁸⁹ Statement of Lt Gen Hosmer, Exhibit 45, at 11-12.

⁹⁰ *Id.* at 12. According to Lt Gen Hosmer, he "quintuple[d]" the size of the Academy's AFOSI detachment in an effort to solve the crime. *Id.* He recalled the AFOSI interviewed hundreds of male cadets, but no perpetrator was ever identified. *Id.* For more information on this investigation, *see* OSI Case Summaries, Exhibit 58, at 5-6.

⁹¹ Statement of Lt Gen Hosmer, Exhibit 45, at 12-15.

⁹² *Id.* at 13.

⁹³ Lieutenant General Hosmer found incidents of harassment were four or five times greater than assaults, and most of the assaults were groping incidents. He was surprised there were incidents of alleged rape. *Id.* at 14. Through an informal, non-scientific survey of female cadets, the Superintendent learned that "a tenth or less" of the female cadets at that time said they had been raped since entering the school, a number he found quite alarming. *Id.* at 14-15. The only other non-Academy comparison data available to the Superintendent at the time was a study that, to his recollection, suggested approximately twenty-five percent of female college students experience a rape situation before graduating from college. *Id.* at 14.

Based on the feedback he received from the cadets, Lt Gen Hosmer, initiated certain changes to the services offered by the Academy to victims of sexual assault.⁹⁴ First, the Superintendent addressed issues relating to the Cadet Counseling Center, which was established in 1957 as a resource for cadets to receive personal counseling on issues of concern.⁹⁵ With respect to reporting issues of sexual assault to the Cadet Counseling Center, cadets expressed a lack of trust in any “confidentiality” that the Cadet Counseling Center could offer to the cadets since the Cadet Counseling Center at the time was under the Training Wing chain of command.⁹⁶ To address this concern, the Superintendent commissioned a twenty-four hour sexual assault “Hotline” in 1993 operating outside the cadet chain of command, through which cadets could seek counseling and support with confidentiality assured.⁹⁷ Second, to encourage official reporting of sexual assaults by allaying victim fear of discipline for their own misconduct related to sexual assault incidents (*e.g.*, alcohol infractions), the Superintendent instituted a policy of case-by-case victim amnesty, wherein the victim’s chain of command could promise to forgo punishment of victim misconduct related to the sexual assault incident before the victim provided information about the incident.⁹⁸

Lieutenant General Hosmer also made more generalized efforts in cadet character development programs that indirectly affected sexual assault issues.⁹⁹ He commissioned the Center for Character Development in 1993.¹⁰⁰ The mission of the Center, to be run under the supervision of the Commandant, was to assess the character makeup of cadets and develop education and training programs to improve the overall character of the cadet population.¹⁰¹ Center activities that impacted sexual assault issues focused on setting and enforcing standards in Fourth-Class cadets (freshmen), particularly during Basic Cadet Training, so that cadets knew what standards of conduct were expected of them, and the limits of authority of upperclass cadets over them.¹⁰²

As a general matter, the focus of the 1993 sexual assault program was on victim support. To Lt Gen Hosmer, providing confidentiality and amnesty to victims to encourage them to get help was of paramount importance.¹⁰³ Bringing the alleged assailant to justice, while a concern, did not appear to be a primary concern at the time.¹⁰⁴ Only if and when victims became ready, would they be encouraged to bring their complaints to AFOSI for investigation and potential prosecution under

⁹⁴ *Id.* at 15.

⁹⁵ Statement of Director, Cadet Counseling Center, Exhibit 47, at 22.

⁹⁶ Statement of Lt Gen Hosmer, Exhibit 45, at 15-17. This was a commentary on the command relationship of the Counseling Center reporting to the Commandant, not on the quality of service provided. *Id.* In fact, when the Superintendent later established the sexual assault Hotline, it was run substantially by the same personnel, but under a different chain of command.

⁹⁷ *Id.* at 15-18. The Hotline was run by the base medical group, which was under the chain of command of the Superintendent, but was not controlled by the Training Wing, under which cadet supervision fell. *Id.* at 18.

⁹⁸ *Id.* at 22-24. This policy did not address amnesty for other cadet witnesses that may have known information related to a particular sexual assault incident. *Id.* at 23. The Academy amnesty policy is discussed in detail in the “Amnesty” section of this report. See this Report, Section III.E., Amnesty for Infractions.

⁹⁹ *Id.* at 25; see also GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43, at 49-50.

¹⁰⁰ See *Id.* at 25; see also Statement, Brig Gen Wagie, Exhibit 198, at 4, 45.

¹⁰¹ Statement of Lt Gen Hosmer, Exhibit 45, at 25-26.

¹⁰² See *Id.* at 26.

¹⁰³ *Id.* at 16-21.

¹⁰⁴ *Id.* at 16-21, 29.

the Uniform Code of Military Justice (UCMJ).¹⁰⁵ Under this approach, the victim had control over whether an investigation or prosecution would commence.¹⁰⁶

The General Accounting Office (GAO) issued a report on sexual harassment at all service academies in 1994.¹⁰⁷ The GAO identified ongoing sexual harassment problems at the academies.¹⁰⁸ When interviewed, Lt Gen Hosmer could not recall seeing GAO sexual harassment reports that raised issues beyond those he was hearing from the women themselves.¹⁰⁹ The Academy conducted its own social climate surveys beginning in academic year 1991-1992.¹¹⁰ From 1993-1995, the Academy's Institutional Research Division summarized and analyzed survey results.¹¹¹ During Lt Gen Hosmer's tenure, however, the surveys did not include questions on sexual assault.¹¹²

2. July 1994 through July 1997

Lieutenant General Paul E. Stein took over as Superintendent of the Academy when Lt Gen Hosmer retired in 1994.¹¹³ Lieutenant General Stein saw sexual assault as an important issue.¹¹⁴ To address issues of perceived lack of trust in AFOSI to investigate cases of sexual assault, he arranged for assignment of a female special agent with specialized training in sexual assault investigations in an effort to make female cadets more comfortable with the investigative process.¹¹⁵ He also persuaded AFOSI to upgrade the AFOSI detachment commander position to be filled by a Major (O-4) instead of a Captain (O-3) to provide more experienced investigative supervision.¹¹⁶ In addition, beginning in 1996, the Vice Commandant organized recognition of Sexual Assault Awareness Month each year, receiving a surprisingly strong and candid response from cadets who wanted to get involved in program activities.¹¹⁷

¹⁰⁵ *Id.* at 17-21.

¹⁰⁶ *See Id.* Lieutenant General Hosmer stated that he recognized the tension between maintaining victim confidentiality while providing them needed support and the need to bring assailants to justice, but he believed support was most important and that providing support would lead to more investigations because more victims would trust the system. The conflict between encouraging reporting and punishing offenders is discussed in detail in Section III.D.6., Fear of reporting, the significance of confidentiality, and confidentiality in the Air Force.

¹⁰⁷ GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21. This followed another report issued by the GAO in 1993. GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43. *See* this Report, Appendix E, *Relevant Reports*.

¹⁰⁸ GAO Report, DoD Service Academies, Further Actions Needed to Eradicate Sexual Harassment, Statement by Mark E. Gebicke before the Subcommittee on Force Requirements and Personnel, Committee on Armed Services, U.S. Senate (January 1994), Exhibit 48, at 2 (testifying that "[t]he academies have not met the goal . . . of providing an environment that is free from sexual harassment").

¹⁰⁹ Statement of Lt Gen Hosmer, Exhibit 45, at 8.

¹¹⁰ The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy, Connie J. Johnmeyer, Exhibit 49, at 11.

¹¹¹ Academy Climate Survey Data, AY 1993-2002, Exhibit 53.

¹¹² The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy, Connie J. Johnmeyer, Exhibit 49, at 11. Sexual assault questions were added to the Social Climate Survey in 1996. *Id.*

¹¹³ Lieutenant General Stein died on January 9, 2002. http://www.af.mil/news/biographies/stein_pe.html.

¹¹⁴ Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 36; Statement of Victim Advocate Coordinator, Exhibit 50, at 45.

¹¹⁵ Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 22; and Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 8-9.

¹¹⁶ Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 16, 22.

¹¹⁷ *See id.* at 24.

Lieutenant General Stein was concerned that sexual assault victims might be reluctant to come forward for assistance because the Cadet Counseling Center was part of the Center for Character Development, a Training Wing organization under the control of the Commandant, the person with primary responsibility for the cadet disciplinary process. He focused on resolving the issue, and in late 1996 or early 1997, the Cadet Counseling Center was realigned and moved under the Dean of the Faculty, and attached to the Department of Behavioral Sciences and Leadership.¹¹⁸ Lieutenant General Stein believed the realignment, which clearly separated counseling services from the disciplinary process and placed them under the control of different Academy elements, would enhance cadet confidence and comfort, making them more willing to come forward for help.¹¹⁹ Once again, the primary focus was not on bringing assailants to justice.

During this period, support mechanisms for victims of sexual assault were expanded and procedures for the confidential Hotline were revised so victims could omit their name altogether from Counseling Center records.¹²⁰ (The Commandant and Superintendent were still informed that an incident had occurred, but were not told who was involved unless the victim consented to such disclosure.)¹²¹ Cadet volunteers began taking calls to the Sexual Assault Hotline on January 1, 1996.¹²² In addition to adding a female agent trained in handling sexual assault investigations to the AFOSI detachment, a clinical psychologist was added to the staff of the Center for Character Development with a focus on victim support and encouraging victims to bring allegations forward.¹²³ Meanwhile, the confidentiality and case-by-case victim amnesty policies continued for the victims who provided their names to the Cadet Counseling Center.¹²⁴ These policies, as well as the Sexual Assault Services Committee, were formalized with the promulgation of Headquarters United States Air Force Academy Instruction (USAFA Instruction) 51-201 in the summer of 1997.¹²⁵ Military Training Airmen (MTAs), now called Military Training Leaders, (MTLs), were assigned to each cadet squadron at the Academy in 1996, adding a leadership and communication resource to the Cadet Wing.¹²⁶

In 1995, the Academy established the Sexual Assault Services Committee.¹²⁷ The Sexual Assault Services Committee was then composed of representatives from the Training Wing, the Cadet Counseling Center (staff and cadet members), the Center for Character Development, the

¹¹⁸ Statement of Director, Center for Character Development (1996 to 2002), Exhibit 261, at 2. As a result of the realignment, the Center for Character Development transferred some personnel authorizations and a portion of its budget to the Department of Behavioral Sciences and Leadership. *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 20.

¹²¹ *Id.*

¹²² Statement of Victim Advocate Coordinator, Exhibit 50, at 49. Twenty-four cadets responded to the initial request for volunteers. *The Road to Zero Tolerance*, Exhibit 49, at 19. The following semester an additional forty-six cadets volunteered, bringing the total to seventy. *Id.*; see also Background Paper on USAFA Assault Response and Education Program, Exhibit 42, at 2.

¹²³ Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 22.

¹²⁴ *Id.*

¹²⁵ USAFA Instruction 51-201, Cadet Victim/Witness Assistance and Notification Procedures, (July 15, 1997), Exhibit 86; see also Background Paper on USAFA Sexual Assault and Education Program, Exhibit 42, at 1-2. The Instruction was revised in 2000. USAFA Instruction 51-201, Cadet Victim/Witness Assistance and Notification Procedures, April 18, 2000, Exhibit 55. For a discussion of the revisions, see this Report, Section III.D., The Unique Reporting System.

¹²⁶ Statement of 34th Training Wing Superintendent, Exhibit 54, at 4. These MTLs were “hand-picked” and were all Master Sergeants. *Id.*

¹²⁷ Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 16.

medical group, AFOSI, Security Forces, and the Legal Office.¹²⁸ The Vice Commandant serves as the chairperson of the Sexual Assault Services Committee.¹²⁹ The purpose of the Sexual Assault Services Committee was to integrate the various sexual assault services at the Academy, facilitate the exchange of information among its participants, and to permit discussion of sexual assault cases and issues.¹³⁰ From its inception in 1995 through June 1998, the Sexual Assault Services Committee usually met monthly, but consistently at least twice per quarter, and received information on sexual assaults and sexual harassment.¹³¹ According to the Vice Commandant at the time, she kept both the Commandant and the Superintendent informed about Sexual Assault Services Committee issues and what was said at the meetings, including information on incidents reported anonymously to the Cadet Counseling Center.¹³²

In 1995, the GAO issued a follow-on report to its 1994 report on sexual harassment at the service academies.¹³³ This report showed that sexual harassment had not improved at any of the academies, and found that seventy-eight percent of Air Force Academy female cadets responding indicated they were harassed on a recurring basis, a significant increase over the fifty-nine percent in an academic year (AY) 1990-1991 study.¹³⁴ The Working Group found no evidence that Academy leadership took any direct action in response to the 1995 GAO report, although Climate Surveys and Center for Character Development activities were ongoing.

The Academy conducted Social Climate Surveys in the Spring of each year while Lt Gen Stein was Superintendent, until 1996 when the survey was moved to the Fall.¹³⁵ Lieutenant General Stein initiated and closely monitored a Process Action Team that met periodically to evaluate the Academy's social climate and the survey instrument used to measure that climate.¹³⁶ This culminated in a revised Social Climate Survey first used in 1996, a survey that included sexual assault questions for the first time.¹³⁷ The sexual assault results of the 1996 survey were summarized, but do not appear to have been presented to leadership during that time.¹³⁸

¹²⁸ In addition to the original organizations represented in the Committee's membership, more were added over time. By the time the Vice Commandant from 2001 to 2002 took over as chairperson, he believed the Committee "might have been almost too big and it caused some drag on its ability to function." Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 17. He believed there were "too many people from too many organizations" attending the meetings. *Id.* at 21.

¹²⁹ *Id.* at 16-18.

¹³⁰ *Id.* at 17-18.

¹³¹ *Id.* at 17-18.

¹³² *Id.* at 36. The Vice Commandant commented that "General Stein, in particular, was very attuned to what was going on...he was so concerned over the issue that he wanted to know everything that happened." *Id.*

¹³³ GAO Report, DoD Service Academies, Update on Extent of Sexual Harassment (March 1995), Exhibit 22.

¹³⁴ *Id.* at 8. For further discussion of GAO reports, see *infra*, "Relevant Reports," at "Appendix E."

¹³⁵ Academy Climate Survey Data, AY 1993-2002, Exhibit 53; see also *The Road to Zero Tolerance*, Exhibit 49, at 22-23. In 1996, a survey was administered in the Spring and in the Fall. Academy Climate Survey Data, AY 1993-2002, Exhibit 53. For further information, see this Report, Section III.I., Social Climate Surveys.

¹³⁶ Statement of Former Director, Counseling Center, Exhibit 60, at 2. While Lt Gen Stein was substantially involved in establishing and monitoring the progress of the Process Action Team, it was chaired by Brig Gen Wagie. E-mail from Director of Curriculum, Squadron Officer College (former Director of Cadet Counseling Center), Exhibit 61.

¹³⁷ Results of Social Climate Surveys, AY 1993-1998, Exhibit 53.

¹³⁸ Memorandum for Record, Group Interview with Academy Personnel, re: Social Climate Survey Data, Exhibit 62.

3. August 1997 through June 2000

Lieutenant General Tad J. Oelstrom became Superintendent when Lt Gen Stein retired in the Summer of 1997.¹³⁹ USAFA Instruction 51-201 took effect in July 1997, right before Lt Gen Oelstrom arrived.¹⁴⁰ This Instruction, though landmark in nature and inconsistent in some respects with overall Air Force policy,¹⁴¹ did not bring about great change at the Academy. That is because many of the important aspects of the Instruction, *e.g.*, access to counseling, counseling confidentiality, victim amnesty, the Sexual Assault Services Committee, had been implemented in the years before the Instruction was in effect. However, the Instruction did serve the purpose of defining responsibilities and services in a single document accessible to all cadets and staff.

Lieutenant General Oelstrom stated that beginning with his appointment as Superintendent, he sought to acquire a good understanding of the acceptance and progress of women at the Academy.¹⁴² After receiving input on these issues for six to seven months, he concluded that the progress, competitiveness, and performance of female cadets were remarkable, and that women had been well accepted into the Academy by that time.¹⁴³ As such, his focus as Superintendent was more on high-level character issues and less on specific issues such as command responses to sexual assault and gender climate issues. Instead, the Commandants, Vice Commandants, and personnel in the Cadet Counseling Center guided sexual assault response and gender climate initiatives.

Lieutenant General Oelstrom believed that mutual support among cadets, including respect for each other, was the key to avoiding many character-related problems, including sexual misconduct.¹⁴⁴ His efforts to improve mutual support at the Academy focused on respect for one another, taking care of each other, and following the rules.¹⁴⁵ Although he could not quantify or enumerate ways he changed character development education, Lt Gen Oelstrom recalls asking for and receiving frequent input on the issue from the various components at the Academy.¹⁴⁶ During Academic Year 1998-1999, he commissioned an outside Character Development Review Panel, led by Lt Gen (retired) Hosmer, a former Superintendent, to review all Academy character development programs.¹⁴⁷ The final results of this review were not completed before Lt Gen Oelstrom's retirement, but he did not recall receiving any preliminary concerns from the panel about sexual harassment or sexual assault.¹⁴⁸

¹³⁹ Statement of Lt Gen Oelstrom, Exhibit 63, at 4. *See also* Section VI., Leadership Issues Pertaining to Sexual Assault at the Academy.

¹⁴⁰ Statement of Lt Gen Oelstrom, Exhibit 63, at 10; *see* Statement of Maj Gen Lorenz, Exhibit 52, at 41-42.

¹⁴¹ *See* this Report, Section III.G., Victim Support; Section III.E., Amnesty for Infractions; and Section III.D., the United Reporting System, for detailed discussion of the differences between USAFA Instruction 51-201 and the Air Force-wide policy. This Instruction was established in 1997 in coordination with the Air Force Inspector General, the Air Force Judge Advocate General, the Air Force Office of Special Investigations, and the Air Force Surgeon General. Statement of Maj Gen Lorenz, Exhibit 52, at 33.

¹⁴² Statement of Lt Gen Oelstrom, Exhibit 63, at 9. Lieutenant General Oelstrom also was interested in understanding several cadet-related issues, including what motivated cadets to be officers, a perceived lack of motivation to become pilots upon graduation, the integration of intercollegiate athletes within the Cadet Wing, as well as the strength and direction of the Honor Code. *Id.* at 6-7.

¹⁴³ *Id.* at 11-12.

¹⁴⁴ *Id.* at 15-18. Lieutenant General Oelstrom recalls bringing up mutual support in the context of sexual conduct and sexual misconduct during annual meetings recognizing the rising first classmen chosen for leadership positions in the following academic year. *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 18-20.

¹⁴⁷ *Id.* at 19-20.

¹⁴⁸ *Id.* at 20.

Major General Stephen R. Lorenz (then, Brigadier General) was the Commandant from August 1996 to June 1999, and had been in place for almost a year when Lt Gen Oelstrom arrived.¹⁴⁹ He recalled there were ten cadet disciplinary actions involving alcohol during his first two months as Commandant. He formed a Process Action Team, a team that included cadets, to assess the problem, and he implemented new alcohol policies.¹⁵⁰ First, he closed the Sports Bar located in Arnold Hall for two months to get the cadets' attention.¹⁵¹ Second, he significantly increased the punishment for alcohol offenses under the cadet disciplinary system.¹⁵² Finally, he instituted a policy that any cadet with two alcohol infractions would be recommended for disenrollment and five or six cadets were subsequently disenrolled.¹⁵³ He thought alcohol was a contributing factor in most sexual assaults, and while a sexual assault was not the impetus for his focus on alcohol-related misconduct, he believed it would have a corresponding impact.¹⁵⁴

Lieutenant General Oelstrom made efforts to refine the four-class system to emphasize the unique responsibilities of leadership as cadets move up through the classes.¹⁵⁵ Through the Center for Character Development, he sought to include female role models in annual character and leadership symposiums begun during his time as Superintendent.¹⁵⁶ Brigadier General Mark A. Welsh¹⁵⁷ became the Commandant in June 1999 and served in that capacity until August 2001.¹⁵⁸ In Spring 2000, the twenty-year anniversary of the first graduating class with women, Brig Gen Mark Welsh requested a twenty-year status report of women at the Academy.¹⁵⁹ As part of this information gathering effort, a series of focus groups of male and female cadets were conducted to identify and discuss gender issues, and a panel of current and former female cadets met to identify ways to better integrate women at the Academy.¹⁶⁰ According to Brig Gen Welsh, the groups did not raise sexual harassment or sexual assault as significant areas of concern, but did note that some male cadets continued to make inappropriate comments.¹⁶¹ During Brig Gen Welsh's term as Commandant, and at his direction, the Center for Character Development redesigned lesson plans to

¹⁴⁹ Statement of Maj Gen Lorenz, Exhibit 52, at 2. Major General Lorenz was a Brigadier General during his tour at the Academy and is generally referred to as such in references to that period.

¹⁵⁰ According to the Vice Commandant, Maj Gen Lorenz required cadets involved in alcohol infractions to report to the Commandant's office the next duty day, along with the cadet's AOC, and brief the Commandant and Vice Commandant on what actions were being taken to ensure this did not happen again in that cadet squadron. Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 15-16.

¹⁵¹ Statement of Maj Gen Lorenz, Exhibit 52, at 21. Major General Lorenz said at the Sports Bar, "the emphasis was on bar, not sports." *Id.*

¹⁵² *Id.* The standard punishment was restriction to the cadet area for three months and thirty tours (one tour is one hour of marching with a rifle). Major General Lorenz increased the standard punishment to eighty demerits, eighty tours and restriction for five months. *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ Statement of Lt Gen Oelstrom, Exhibit 63, at 39-40. One of the specific changes he made was to remove the authority of Third-Class cadets to train Fourth-Class cadets. *Id.* at 41-42.

¹⁵⁶ Statement of Lt Gen Oelstrom, Exhibit 63, at 61-62.

¹⁵⁷ Brigadier General Welsh has been selected for Major General, but is referred to throughout this report by his current rank.

¹⁵⁸ Statement of Brig Gen Welsh, Former Commandant, Exhibit 64, at 3-4.

¹⁵⁹ Statement of Brig Gen Welsh, Exhibit 64, at 19. *See also* Talking Paper on Academy Women's Networking Group ("Babes in Blue"), Exhibit 40.

¹⁶⁰ Statement of Brig Gen Welsh, Exhibit 64, at 20-22. The panel was chaired by Col Debra D. Gray, then a Lieutenant Colonel and the Deputy Commander of the 34th Training Group. *See* Talking Paper on Academy Women's Networking Group ("Babes in Blue"), Exhibit 40. Col Gray became the Vice Commandant in April 2003.

¹⁶¹ Statement of Brig Gen Welsh, Exhibit 64, at 21.

address the issue of gender-based name-calling, mainly as a result of the comments from the focus groups.¹⁶²

Brigadier General Welsh invited Lt Gen Oelstrom to address the Cadet Wing in Spring 2000 as part of a lecture series sponsored by the Commandant of Cadets. The Dean of the Faculty adjusted the academic schedule so all cadets could attend. Lieutenant General Oelstrom was invited to speak on his Air Force experiences, but he chose to use the opportunity to talk specifically about character. His remarks focused on the importance of relationships and he stressed the value of diversity and the need for respect for all people. Brigadier General Welsh said the lecture was very good.¹⁶³

During Lt Gen Oelstrom's term as Superintendent in the late 1990's, the victim support mechanisms created under prior Superintendents continued, with some minor refinements. The presumption of victim amnesty practiced under Lt Gen Hosmer and Lt Gen Stein remained during Lt Gen Oelstrom's tenure.¹⁶⁴ During Academic Year 1999-2000, the Commandant and Vice Commandant, with the assistance of the Cadets Advocating Sexual Integrity and Education (CASIE) Program Manager, developed a form that the Cadet Counseling Center could use to pass on more information concerning reports of sexual assaults to the Commandant.¹⁶⁵ (The form was subsequently modified and shortened prior to academic year 2001-2002).

In late 1999 or early 2000, AFOSI headquarters expressed concern about the Academy's unique sexual assault program and sought at least initially to effect a change to implement regular Air Force reporting and investigative procedures.¹⁶⁶ Lieutenant General Oelstrom met with his Staff Judge Advocate and discussed AFOSI's concern and the Academy's position with respect to AFOSI's desire for change. Lieutenant General Oelstrom supported the Academy's existing program and he tasked his Staff Judge Advocate to take the lead in resolving the disagreement with AFOSI.¹⁶⁷ The Academy's Staff Judge Advocate engaged with representatives of AFOSI headquarters and other Air Force agencies with an interest in the matter.¹⁶⁸ The group met to discuss the issue in Washington, D.C., in March 2000.¹⁶⁹ The issue remained unsettled at the time Lt Gen Oelstrom relinquished command to Lt Gen John R. Dallager in June 2000, but it was resolved in Spring 2001.¹⁷⁰

The Academy conducted Social Climate Surveys in Fall 1997, Fall 1998 and Spring 2000.¹⁷¹ In December 1998, the Chief of Sexual Assault Services (a division of the Cadet Counseling Center) provided a briefing to the "Top Six," including the Superintendent (or possibly his executive officer in his behalf), the Commandant, the Dean of the Faculty, the Vice Commandant,

¹⁶² *Id.*

¹⁶³ Statement of Brig Gen Welsh, Exhibit 65, at 53.

¹⁶⁴ Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 17.

¹⁶⁵ Statements of Brig Gen Welsh, Exhibit 64, at 29-31, and Exhibit 65, at 11-12; Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 12-13.

¹⁶⁶ Statement of Academy Staff Judge Advocate (1999 to 2001), Exhibit 67, at 7.

¹⁶⁷ *Id.* at 7-14.

¹⁶⁸ *Id.* at 10. See E-mail, Re: Academy Procedures re: Sexual Assaults, AF/JAG and SAF/GCM, January 10, 2000, Exhibit 92, and E-mail from Brig Gen Taylor, May 4, 2001, Exhibit 95.

¹⁶⁹ Statement of Academy Staff Judge Advocate (1999 to 2001), Exhibit 67, at 5-7.

¹⁷⁰ Further discussion of this issue follows in the description of Lt Gen Dallager's tenure as Superintendent.

¹⁷¹ During the Fall of 1999, the Academy decided to switch survey administration back to the Spring of each year instead of the Fall. For a comprehensive discussion of Social Climate Survey administration and results, see this Report, Section III.I., Social Climate Surveys.

the Training Group Commander, and the Athletic Director.¹⁷² The briefing began with a slide with the words “We Have a Problem,” and the presentation referenced “Cadet Statistics on Sexual Assault.”¹⁷³ The briefing addressed the results of the 1997 Social Climate Survey and showed that an estimated twenty-four percent (this figure appears to be a mathematical error in the slide and should have been fifteen percent) of female cadets (and two percent of male cadets) had been sexually assaulted since coming to the Academy.¹⁷⁴ The briefing also indicated that ten percent of female (and two percent of male) respondents indicated they had been assaulted in the past year.¹⁷⁵ The purpose of the briefing was to obtain approval for a somewhat controversial addition to the sexual assault prevention curriculum, a videotape relating to sexual assault on a male.¹⁷⁶ The videotape was added to the sexual assault training program.¹⁷⁷

The 1998 and 2000 Social Climate Surveys were marked by a low response rate (fifteen percent and eight percent, respectively, compared to seventy-nine percent and fifty-seven percent in 1996 and 1997), causing survey administrators to question the surveys’ results.¹⁷⁸ Of the female respondents to the 1998 and 2000 surveys, eleven percent (twelve of 108 female respondents) and thirteen percent (nine of seventy-one female respondents), respectively, indicated they had been sexually assaulted while at the Academy.¹⁷⁹ The sexual assault results of the 1998 and 2000 surveys were summarized, but do not appear to have been presented to Academy leadership during this period.¹⁸⁰ Notably, the Process Action Team begun under Lt Gen Stein to monitor the social climate and its measurement was not continued under Lt Gen Oelstrom. However, the Sexual Assault Services Committee met monthly, or bi-monthly, during Lt Gen Oelstrom’s term as Superintendent, and the Commandant or Vice Commandant served as the chairperson.¹⁸¹ A Counseling Center representative would discuss statistics on Counseling Center sexual assault

¹⁷² Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2; Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 22-23.

¹⁷³ Briefing slides, Seattle Tape, Exhibit 69 (emphasis in original).

¹⁷⁴ *Id.* Based on the numbers included in the chart (an estimated ninety-nine of 660 female cadets), the correct percentage of females should have been fifteen percent rather than twenty-four percent. (The fifteen percent figure is also consistent with other available information). Academy Climate Survey Data, AY 1993-2002, Exhibit 53. If anything, however, the incorrect figure represented more of a problem than actually existed.

¹⁷⁵ *Id.*

¹⁷⁶ Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2.

¹⁷⁷ Statement of Victim Advocate Coordinator, Exhibit 50, at 72-73.

¹⁷⁸ Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62.

¹⁷⁹ *Id.* The 1998 and 2000 surveys did not include a question on whether respondents had been sexually assaulted at the Academy within the year preceding the survey. The way the questions were worded, overall responses could have included assaults away from the Academy or by non-cadets. For a comprehensive discussion see this Report, Section III.I., Social Climate Surveys.

¹⁸⁰ Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62.

¹⁸¹ During Lt Gen Oelstrom’s term, the Committee was chaired by either the Commandant or the Vice Commandant. Maj Gen Lorenz chaired many of the meetings and they were conducted monthly. Statement of Maj Gen Lorenz, Exhibit 52, at 43; statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2 (stating the Maj Gen Lorenz held monthly meetings). In his absence, the Vice Commandant chaired the meeting. The Vice Commandant from 1995 to 1998 said she held monthly meetings, although they may have been twice per quarter near the end of her tenure. Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 16-17. The Vice Commandant (1998 to 1999) said he held monthly meetings, or about every other month. Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 9-10. The Vice Commandant (1999 to 2000) thought he held meetings quarterly, although he said, “I may be wrong.” Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 10. Other information indicates he was indeed in error. Minutes from the September 2000 meeting, the earliest minutes available, show the monthly meeting schedule for the remainder of calendar year 2000. Sexual Assault Services Committee Meeting Minutes, September 13, 2000, Exhibit 70. The Victim Advocate Coordinator was present throughout this period and recalled that the Committee did not go to a quarterly schedule until 2001. Statement of Victim Advocate Coordinator, Exhibit 50, at 136.

reports at the meetings.¹⁸² During Lt Gen Oelstrom's term, the Commandant received legal advice from the 10th Air Base Wing Legal Office (10 ABW/JA) and the Academy Legal Office (USAFA/JA) at the bimonthly "Cops and Robbers" meetings, at which any pending sexual assault investigations were discussed.¹⁸³

4. June 2000 through April 2003.

Lieutenant General John R. Dallager became Superintendent of the Academy in June 2000.¹⁸⁴ His initial impression was the Academy was not as well connected to the Air Force as it should be.¹⁸⁵ He thought some personnel had spent too much of their careers at the Academy and were not in touch with the Air Force's current operational environment.¹⁸⁶ The Academy had been through some recent controversies over ethical issues, as well as an outside review of the honor and character climate.¹⁸⁷ Lieutenant General Dallager found himself impressed by the quality of the cadet population, but not as much with the permanent party staff, particularly those that interfaced directly with cadets.¹⁸⁸ He advocated at the 2000 and 2002 CORONA summits to increase the selectivity of staff assigned to work at the Academy, with a particular emphasis on the qualifications of Air Officers Commanding (AOCs).¹⁸⁹

Brigadier General Welsh was the Commandant for Lt Gen Oelstrom's last year as Superintendent and Lt Gen Dallager's first year, and his character development efforts occurred across both superintendents' terms. He assessed character development training and reduced the total number of training hours, focusing on the quality of the training rather than the quantity.¹⁹⁰ He changed sexual harassment training to have classes taught by faculty members, counselors, officers, or NCOs instead of cadets teaching cadets.¹⁹¹ While Brig Gen Welsh was the Commandant, he met quarterly with Cadet Wing staff and each of the four Group staffs, keeping cadet lines of communication open.¹⁹² Except for the November 15, 2000 Sexual Assault Services Committee meeting that Brig Gen Welsh chaired,¹⁹³ the Vice Commandant served as the Committee's chairperson and held meetings monthly or not less than every other month.¹⁹⁴

¹⁸² Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 18; Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2.

¹⁸³ Statement of Director of Admissions (Vice Commandant 1999 to 2000), Exhibit 66, at 13, 19-20.

¹⁸⁴ Statement of Lt Gen Oelstrom, Exhibit 63, at 4.

¹⁸⁵ Statement of Lt Gen Dallager, Exhibit 71, at 4.

¹⁸⁶ *Id.* at 4-5.

¹⁸⁷ *Id.* at 6.

¹⁸⁸ *Id.* at 7.

¹⁸⁹ *Id.* at 17-19. This is a frustration cited by Superintendents and Commandants throughout the 1993-2003 period.

¹⁹⁰ The Director of the Center for Character Development from 1996 to 2002 noted that during his six years tenure the Superintendents and Commandants increased the amount of donor funds ("gift money") provided to the Center to enhance character development programs from about three or four thousand dollars in 1996 to two hundred and fifty to three hundred thousand dollars in 2002. Statement of Director of Center for Character Development (1996 to 2002), Exhibit 72, at 23.

¹⁹¹ Statement of Brig Gen Welsh, Exhibit 64, at 17-18.

¹⁹² Statement of Director of Admissions (Vice Commandant 1999 to 2000), Exhibit 66, at 27.

¹⁹³ Sexual Assault Services Committee Meeting Minutes, Exhibit 73.

¹⁹⁴ Statement of Victim Advocate Coordinator, Exhibit 50, at 134, 136. The Victim Advocate Coordinator recalled the Sexual Assault Services Committee meeting monthly until a new Vice Commandant arrived in 2001 and switched to quarterly meetings. The change to a quarterly schedule is noted in the minutes for the March 7, 2001 meeting. Minutes of Sexual Assault Services Committee, March 7, 2001, Exhibit 74. While meetings were scheduled each month, some were later canceled. For example, the minutes from the meeting Brig Gen Welsh chaired in November 2000 said the December 2000 meeting was canceled. Minutes of Sexual Assault Services Committee, November 15, 2000, Exhibit 73.

The Headquarters AFOSI issue concerning sexual assault reporting and investigation continued after Lt Gen Dallager arrived. In late July 2000, the Academy received a compromise proposal that tried to balance both sides' interests. The proposal required disclosure to the Commandant of the victim's name and subject's name, which was counter to the program that made this information confidential.¹⁹⁵ In November 2000, Brig Gen Francis X. Taylor, Commander, Headquarters AFOSI, visited the Academy and met with Lt Gen Dallager to discuss the issue.¹⁹⁶ According to Brig Gen Taylor, they had an hour-long discussion and he thought both sides understood the other's concerns. He believed Lt Gen Dallager was receptive to finding a methodology that would satisfy AFOSI while assuring anonymity for the victim.¹⁹⁷ Brigadier General Taylor traveled to the Academy again in late April or early May 2001 and met with Brig Gen Welsh. According to Brig Gen Welsh, he and Brig Gen Taylor agreed that a form Brig Gen Welsh began developing in Fall 2000 would be provided to the Academy's AFOSI detachment so they could track sexual assault cases, but it would not include names.¹⁹⁸ This resolved AFOSI's concerns and led Brig Gen Taylor to conclude the Academy's program could be a model for the entire Air Force.¹⁹⁹ The Working Group found no indication that their agreement was implemented, and the tracking form continued to be one with little substantive information.

Brigadier General S. Taco Gilbert became Commandant in August 2001.²⁰⁰ He set out to change the disciplinary climate at the Academy, trying to hold cadets more accountable for their actions, consistent with the "marching orders" he received from the Chief of Staff of the Air Force.²⁰¹ He said that with the exception of changing the standard for men's sideburns, he did not implement any new standards, but set out to enforce existing standards.²⁰² Among some of his initial steps was an effort to instill what he called "Big A" accountability, which he described as the Cadet Wing leadership taking responsibility for its members, rather than "little a" accountability, which he described as focusing responsibility on the individual cadet -- "Were you there? Were you late? What excuse do you have?"²⁰³ He sought to address what he perceived as misplaced loyalty, that is, a cadet's primary loyalty was to his or her classmates rather than loyalty to values and the greater mission.²⁰⁴ Brigadier General Gilbert instituted a uniform of the day policy, requiring all cadets to dress in the same type of uniform, to correct what he saw as lax enforcement of uniform standards.²⁰⁵ Finally, he attempted to engage with the civil engineer to restore the

¹⁹⁵ Statement of Academy Staff Judge Advocate (1999 to 2001), Exhibit 67, at 9-10; SAF/GCM Compromise Proposal, Exhibit 93.

¹⁹⁶ E-mail, Re: Academy, from Brig Gen Taylor, November 19, 2000, Exhibit 94.

¹⁹⁷ *Id.*

¹⁹⁸ Statement of Brig Gen Welsh, Exhibit 64, at 32-34. The forms the Counseling Center used required notification of the Academy's security forces squadron, but not AFOSI. See Sexual Assault Services Tracking Form, Exhibit 75. Soon after making this agreement, Brig Gen Taylor retired (on July 1, 2001). Brigadier General Welsh relinquished command in August 2001. Statement of Brig Gen Welsh, Exhibit 64, at 4.

¹⁹⁹ Statement of Brig Gen Welsh, Exhibit 65, at 20, and E-mail from Brig Gen Taylor, May 4, 2001, Exhibit 95.

²⁰⁰ Statement of Brig Gen Gilbert, Exhibit 10, at 6-7.

²⁰¹ *Id.* at 41-42. See also statement of Gen (Ret) Michael E. Ryan, Exhibit 76, at 4.

²⁰² Statement of Brig Gen Gilbert, Exhibit 10, at 10-11.

²⁰³ *Id.* at 11. Brigadier General Gilbert said he wanted the cadets to apply the same approach they would encounter in the Air Force where those in leadership positions are responsible for their subordinates. *Id.*

²⁰⁴ *Id.* at 13-14.

²⁰⁵ *Id.* at 15. Brigadier General Gilbert observed that cadets had been allowed to wear running suits in the dining hall, which devolved to gym shorts and then tank tops. He also noted that cadets were not correcting each other for not complying with uniform requirements. *Id.*

deteriorated physical conditions in the cadet dormitories and around the cadet area to provide a professional environment.²⁰⁶

Brigadier General Gilbert continued where Brig Gen Welsh left off in the refinement of the Academy's character development programs. When he arrived, there were character development seminars specifically targeted at First-Class cadets (seniors) and Second-Class cadets (juniors), as well as cadets in command positions.²⁰⁷ He worked with the staff at the Center for Character Development in Spring 2002 to develop seminars for all four classes, which required creating a new seminar for Fourth-Class cadets (freshmen) and repositioning the other seminars among the three remaining classes. The result was every class had character development training every year especially tailored to meet the needs of that class.²⁰⁸ Lieutenant General Dallager invited the Character Development Review Panel back to the Academy in Spring 2002 to discuss the implementation of the recommendations the Panel made in their 2000 report.²⁰⁹

Attention to the Sexual Assault Services Committee diminished. The frequency of the meetings declined and the minutes from the March 2001 meeting indicate the Committee switched to a quarterly meeting schedule.²¹⁰ A review of the minutes for calendar years 2001 and 2002 show three meetings in 2001 and two meetings in 2002.²¹¹ During the thirty-three months that Lt Gen Dallager served as the Superintendent, there were four Vice Commandants who served as the Committee's chairperson²¹² and three Chiefs of Sexual Assault Services.²¹³ USAFA Instruction 51-201 requires the Sexual Assault Services Committee to provide biannual reports on sexual assault issues to the Superintendent and other senior leaders.²¹⁴ The Working Group found no indication that written reports were ever furnished to a Superintendent. However, the Chief of Sexual Assault Services briefed Lt Gen Dallager on sexual assault issues, including the number of sexual assaults reported to the Cadet Counseling Center, on two occasions, once in April 2002 and again in November 2002.²¹⁵

²⁰⁶ *Id.* at 15. Brigadier General Gilbert said there were dead trees in the cadet area, holes in walls in the dormitories, and areas that needed painting. His initial effort to engage the civil engineer was not successful, but the civil engineer who arrived in 2002 was much more responsive. *Id.* The Vice Commandant at the time thought this was an important step, saying: "How do you tell a cadet to polish his brass and take care of his room, you know, to the Academy inspection standards when as soon as he walks out of that room there's a big hole in the wall? There's trash in the area. The trees in the Air Garden are dead." Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 102.

²⁰⁷ Statement of Brig Gen Gilbert, Exhibit 10 at 21.

²⁰⁸ *Id.* at 22.

²⁰⁹ Statement of Lt Gen Dallager, Exhibit 71, at 52-53.

²¹⁰ See Sexual Assault Services Committee Meeting Minutes, March 7, 2001, Exhibit 74.

²¹¹ *Id.*; Sexual Assault Services Committee Meeting Minutes, October 5, 2001, Exhibit 77; Sexual Assault Services Committee Meeting Minutes, December 13, 2001, Exhibit 78; Sexual Assault Services Committee Meeting Minutes, February 21, 2002, Exhibit 79; and Sexual Assault Services Committee Meeting Minutes, May 2, 2002, Exhibit 80.

²¹² Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 10; Sexual Assault Services Committee Meeting Minutes, September 13, 2000, Exhibit 70; Sexual Assault Services Committee Meeting Minutes, March 7, 2001, Exhibit 74; and Sexual Assault Services Committee Meeting Minutes, January 31, 2003, Exhibit 81. Additionally, Brig Gen Welsh chaired the November 15, 2000 meeting. Sexual Assault Services Committee Meeting Minutes, November 15, 2000, Exhibit 73.

²¹³ Statement of the Chief of Sexual Assault Services from 1999 to 2001, Exhibit 82; Statement of the Chief of Sexual Assault Services (2001 to 2002), Exhibit 83; and Statement of the Chief of Sexual Assault Services (2002 to Present), Exhibit 20.

²¹⁴ USAFA Instruction 51-201, ¶ 2.4, Exhibit 55.

²¹⁵ Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2; Statement of Chief of Sexual Assault Services (2002 to Present), Exhibit 20, at 3.

Some key features of the sexual assault response program were challenged during Brig Gen Gilbert's tenure as Commandant. Brigadier General Gilbert believed victim confidentiality through a counseling center that was not under the control of the command element undermined his ability to take action against offenders and provide support to the victims.²¹⁶ He made an effort to move the Cadet Counseling Center from the Department of Faculty to the Training Wing, but Lt Gen Dallager was concerned that placing it under the Commandant would raise questions about whether victim confidentiality could be maintained.²¹⁷ Additionally, the perception that some cadets were punished under the cadet disciplinary system for infractions revealed when they reported sexual assaults (e.g., underage drinking) caused at least some to question whether it was in a cadet's best interest to come forward.²¹⁸

The Academy produced sexual assault information during Lt Gen Dallager's tenure. Cadet Social Climate Surveys, including questions pertaining to sexual assault, were administered in 2000, 2001 and 2002.²¹⁹ However, with the exception of a July 3, 2002 meeting in which Lt Gen Dallager specifically asked for survey data and was briefed on the 2002 results, the Academy's command was not apprised by Academy staff of the number of cadets who indicated in their survey responses that they had been sexually assaulted.²²⁰ In the April and November 2002 briefings by the Chief of Sexual Assault Services referenced above, Lt Gen Dallager was provided information on the number of cadets reporting sexual assaults to the Cadet Counseling Center.²²¹ The slides presented at the April 2002 briefing showed twenty-three cadets had reported a sexual assault to the Cadet Counseling Center at that point in the 2001-2002 academic year compared with eight reports per year in academic years 1999-2000 and 2000-2001.²²² This significant increase was explained as a positive indicator that cadets were more likely to report sexual assault.

B. The Academy's Definition of Sexual Assault

The Academy uses a definition and explanation of "sexual assault" in its instructions and training materials that is inconsistent with Air Force practice (and law) and is susceptible to creating inaccurate perceptions, expectations, and even inaccurate reports of assault.

The definition was formalized in the 1997 publication of USAFA Instruction 51-201 and modified in the 2000 version of the Instruction. The Academy currently defines sexual assault as:

²¹⁶ Statement of Brig Gen Gilbert, Exhibit 10, at 52-53.

²¹⁷ Statement of Lt Gen Dallager, Exhibit 71, at 141. According to the Commandant, the Dean of Faculty shared the Superintendent's concerns. Statement of Brig Gen Gilbert, Exhibit 10, at 54-55.

²¹⁸ Statement of Lt Gen Dallager, Exhibit 71, at 68-69; *see also* Statement of Victim Advocate Coordinator, Exhibit 50, at 118-119; Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 6.

²¹⁹ Statement of Director, Cadet Counseling Center, Exhibit 47, at 16.

²²⁰ Statement of Director, Cadet Counseling Center, Exhibit 33, at 13-14. He said there were too few respondents in the 2000 survey and the answers on the sexual assault portion of the 2001 and 2002 surveys were incongruent (e.g., male respondents indicating they were assaulted by vaginal penetration or respondents that answered yes to the question but then said the number of occurrences was zero), so he deemed the data invalid. He said senior leadership was not provided the data with the exception of the 2002 data provided to Lt Gen Dallager during the July 3, 2002 meeting. *Id.* *See also*, statement of Counseling Center Director, Exhibit 47, at 16-18. But *see* this Report, Section VI.D., regarding the Dean of Faculty.

²²¹ Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2; Statement of Chief of Sexual Assault Services (2002 to Present), Exhibit 20, at 3.

²²² Briefing Slides, Sexual Assault Services, Exhibit 85.

[T]he unlawful touching of another in a sexual manner, including attempts, in order to arouse, appeal to, or gratify the lust or sexual desires of the accused, the victim or both, and which is without justification, excuse, or consent. Sexual assault includes, but is not limited to rape, sodomy, fondling, unwanted touching of a sexual nature, and indecent sexual acts that the victim does not consent to, or is explicitly or implicitly forced into. Consent is not given where there is force, threat of force, coercion, or when the person is alcohol impaired, underage, or unconscious. It is immaterial whether the touching is directly upon the body of another or is committed through the person's clothing.²²³

This definition is then interpreted broadly in the Academy's training materials.²²⁴

Under military law, specifically the Uniform Code of Military Justice (UCMJ), while there is no specific offense of "sexual assault" the UCMJ does define a family of crimes that would normally be considered acts of sexual assault, among them: Rape (Article 120), Sodomy By Force and Without Consent (Article 125), Indecent Assault (Article 134), Assault with Intent to Commit Rape or Sodomy (Article 134), Carnal Knowledge (Article 120) and Indecent Acts or Liberties with a Child (Article 134).²²⁵ In formulating the Academy definition, various elements of proof necessary to establish these individual offenses appear to have been combined, but that amalgamation has misleading aspects.

The area of greatest confusion in the Academy definition relates to the issue of consent. Even though the Academy's definition of sexual assault addresses consent, the explanation is, in part, inconsistent with law, and misleading. This problem can be shown through an examination of the offense of rape under the UCMJ. The elements that must be proven for rape are:

- 1) That the accused committed an act of sexual intercourse; and
- 2) That the act was done by force and without the victim's consent.²²⁶

Rape can be "committed on a victim of any age [and] any penetration, however slight is sufficient to complete the offense."²²⁷

At first glance, the Academy's definition requiring that a sexual assault be accomplished "without...consent" appears consistent with the UCMJ requirement for proof of *lack* of consent for rape. However, the Academy's definition broadly asserts "[c]onsent is not given where there is force, threat of force, coercion, *or when the person is alcohol impaired*, underage, or unconscious."²²⁸ This misstates the law, as alcohol impairment short of intoxication sufficient to render a person incapable of consent will not, alone, negate consent (see below).²²⁹ To the extent that the definition implies that having consumed alcohol and being impaired to any degree negates

²²³ USAFA Instruction 51-201, at ¶ 2.2, Exhibit 55. The USAFA Instruction cited is the 2000 Instruction. The previous 1997 Instruction did not include "alcohol impaired" in the litany of factors that obviates consent. See USAFA Instruction 51-201, Cadet Victim/Witness Assistance and Notification Procedures, ¶ 2.2. (July 15, 1997) Exhibit 86.

²²⁴ See this Report, Section III.C., Prevention and Awareness Training.

²²⁵ There are other sexual misconduct offenses as well. See *generally* Overview of the Treatment of Sexual Offenses Under the UCMJ, March 2002, Exhibit 87.

²²⁶ MANUAL FOR COURTS-MARTIAL, UNITED STATES, pt. IV, ¶ 45 (2002) [hereinafter MCM].

²²⁷ *Id.*

²²⁸ USAFA Instruction 51-201, at ¶ 2.2, Exhibit 55 [emphasis added].

²²⁹ See *U.S. v. Tollinchi*, 54 M.J. 80 (CAAF 2000).

consent, it is significantly misleading to cadets, and likely to result in allegations of sexual assault under circumstances that would not meet criminal requirements.

Further, under the UCMJ, proof of lack of consent is required to establish the first two offenses listed above (rape and forcible sodomy) and requires more than showing a “mere lack of acquiescence.” If a victim in possession of his or her mental faculties fails to make lack of consent reasonably manifest by taking such measures of resistance as are called for by the circumstances, the inference may be drawn that the victim did consent.²³⁰ In evaluating whether there was a lack of consent, a judge or jury will consider the “totality of the circumstances, including the level of resistance.”²³¹

(However, the law does not infer consent if “resistance would have been futile, where resistance is overcome by threats of death or great bodily harm, or where the victim is unable to resist because of the lack of mental or physical faculties.”²³² In such a situation, the law will not infer consent and the force involved in the actual penetration shall suffice for the force needed to prove the offense.²³³ In addition, lack of consent may be found in some circumstances where coercion or fear has induced compliance, which is referred to in the law as constructive force.²³⁴ Further, military case law does “not construe passive acquiescence of an insensate, or sleeping woman, as consent. . . .”²³⁵ Evidence of loss of consciousness due to alcohol and medications is sufficient to support the conviction of rape.²³⁶ Thus, if a person is so inebriated as to be unable to consent, or drunk to the point of unconsciousness, sexual intercourse under those circumstances may be considered rape.)²³⁷

The issue of consent is complicated in situations that call into question whether there was an affirmative defense of “mistake of fact” available to the alleged assailant.²³⁸ Typically, the issue of mistake of fact is encountered in those situations where the accused asserts that the actions, or the

²³⁰ MCM, pt. IV, ¶ 45(c)(1)(b) (2002). See also MANUAL FOR COURTS-MARTIAL, UNITED STATES, R.C.M. 916(j)(1) (2002) [hereinafter R.C.M.].

²³¹ *U.S. v. Williamson*, 24 M.J. 32 (CMA LEXIS 257) (April 10, 1987) citing *U.S. v. Henderson*, 4 U.S.C.M.A. 268, 273, 15 C.M.R. 268, 273 (1954).

²³² MCM, pt. IV, ¶ 45(c)(1)(b) (2002).

²³³ *Id.*

²³⁴ *U.S. v. Simpson*, 55 M.J. 674 at 687 (A.C.C.A. 2001). The *Simpson* Court opined that the concept of constructive force was “recognized as applicable in the military crime of rape.” *Id.* The *Simpson* Court noted that the concept of constructive rape had always included those instances involving a victim who was incapable of giving consent because of physical or mental infirmities and could also include situations involving express or implied threats of bodily harm. *Id.* The *Simpson* Court opined that other instances involving constructive force were further refined to include the “moral, psychological, or intellectual force a parent exercises over a child” *Id.* citing *U.S. v. Palmer*, 33 M.J.7, 9-10 (C.M.A. 1991).

²³⁵ *U.S. v. Briggs*, 46 M.J. 699 (AFCCA 1996). The *Briggs* Court opined, “[w]hen a victim is incapable of consenting because she is asleep, no greater force is required than that necessary to achieve penetration.” *Id.*

²³⁶ *U.S. v. Carver*, 12 M.J.581 (AFCMR 1981).

²³⁷ *E.g. U.S. v. Mathai*, 34 M.J. 33 (C.M.A. 1992)

²³⁸ Mistake of fact is an affirmative, or special defense that if found to be true, would result in the accused not being guilty of the offense although he or she committed the objective acts of the offense charged. R.C.M. 916(j)(1). See also *U.S. v. Willis*, 41 M.J.435 (CAAF 1995) in which it was noted that the “honest and reasonable mistake on part of a service member as to the consent of a female is a valid defense to a charge of rape” See also *U.S. v. Simpson*, 55 M.J. 674 (ACCA 2001) in which the court opined that it “must also be satisfied beyond a reasonable doubt that the [accused] did not entertain an honest and reasonable mistake as to [the victims’] consent (sic).” *Id.* at 22. The *Simpson* Court also noted that “[e]vidence of force and the level of the victim’s resistance are particularly relevant in determining the reasonableness of any mistaken belief the [accused] may have entertained. *Id.* at 22, citing *U.S. v. Pierce*, 40 M.J. 601, 605 (A.F.C.M.R.1994).

lack of action, by the victim caused him to believe that the victim was a willing participant in the act of sexual intercourse. To establish mistake of fact, the accused need only show that the mistake of fact existed in his mind and this mistake of fact was reasonable under all the circumstances surrounding the incident.²³⁹ When an accused raises the affirmative defense of mistake of fact, the prosecution has the burden of proving beyond a reasonable doubt that the defense of mistake of fact did *not* exist.²⁴⁰ To the extent that the Academy definition does not make clear that under many circumstances there is a need to *manifest* the lack of consent, it is misleading and may contribute to the very circumstances that could raise a mistake of fact defense.

The offense of Indecent Assault is the broadest of the offenses listed above that could constitute sexual assault. However, even this offense is not as broad as the Academy definition of sexual assault may imply. The elements that must be proven to convict an accused of Indecent Assault are:

- 1) That the accused assaulted a certain person not the spouse of the accused in a certain manner;
- 2) That the acts were done with the intent to gratify the lust or sexual desires of the accused; and
- 3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.²⁴¹

In addition, for an act to constitute an assault, the act must be done without the lawful consent of the person affected.²⁴² Consequently, the concerns discussed above regarding consent may apply. In addition, not every act, even unwelcome ones with “romantic overtones,” will demonstrate intent to gratify lust or sexual desires.²⁴³ Further, to constitute an indecent assault, the act must be “to the prejudice of good order and discipline” or “of a nature to bring discredit upon the armed forces.” This refers only to acts directly prejudicial to good order and discipline. To “Discredit” means that which tends to “injure the reputation of” the service, bring the service into disrepute, or lower it in public esteem.²⁴⁴ Consequently, some acts that could technically meet the criteria of the first two elements may not rise to a level of criminality and would not result in charges under this statute.

The introduction of the reference to “indecent acts” introduces an additional problematic aspect, because, to constitute an “indecent act” a distinct crime under Article 134, of the UCMJ, the act must be of that form of immorality relating to sexual impurity which is not only grossly vulgar, obscene, and repugnant to common propriety, but tends to excite lust and deprave the morals with respect to sexual relations,²⁴⁵ a level of behavior (and an offense) not explained in the Academy’s definition.

Finally, there appears to be a certain blurring effect in the Academy definition occasioned by the blending of offenses and conduct (e.g., sexual assault includes, but is not limited to rape, sodomy, fondling, unwanted touching of a sexual nature), that allows for a somewhat subjective

²³⁹ R.C.M. 916(j)(1).

²⁴⁰ R.C.M. 916(b).

²⁴¹ MCM, pt. IV, ¶ 63 (2002).

²⁴² MCM, pt. IV, ¶ 54(c)(1)(a) (2002).

²⁴³ See *U.S. v. Hoggard*, 43 M.J. 1 (CAAF 1995).

²⁴⁴ MCM, pt. IV, ¶ 60(c)(3) (2002).

²⁴⁵ MCM, pt. IV, ¶ 90(c) (2002) and *U.S. v. Hoggard*, 43 M.J. 1 (CAAF 1995).

determination of what constitutes “sexual assault.” This subjectivity is exemplified particularly in the phrase, “unwanted touching of a sexual nature,” language more analogous to a definition of sexual harassment than sexual assault.²⁴⁶

As discussed above, there are significant potential gaps between the definition of sexual assault used by the Academy, the requirements of proof under military law, and the potential factual determinations that a court may make. These gaps could create substantial differences between a cadet’s expectations and the reality of the criminal processes. Further, when non-specific reports of “sexual assault” are made through the Academy’s reporting system it is not feasible to ascertain what, and sometimes whether an, offense has been described.

C. Prevention and Awareness Training

Pursuant to Academy instructions, sexual assault prevention and awareness training is provided to cadets, faculty and staff by the Cadet Counseling Center, in consultation with both the Center for Character Development and the Sexual Assault Services Committee.²⁴⁷ The training is extensive and has many noteworthy characteristics. It also has aspects that compound the problematic aspects of the Academy’s definition of sexual assault and lacks a focus on character as a key aspect of deterrence of sexual assault, in addition to which there is an issue with the timing of the training.

1. Training on the Definition of “Sexual Assault.”

As discussed above, the Academy’s definition of “sexual assault” is inconsistent with Air Force practice (and the UCMJ) and is susceptible to creating inaccurate perceptions and expectations. These aspects are compounded by the Academy’s sexual assault prevention and awareness training, which emphasizes a broad interpretation of the Academy’s already broad definition.

Cadet trainees receive their first sexual assault awareness training during Basic Cadet Training (BCT). In an initial BCT briefing, cadets are taught that sexual assault is “any unwanted touching of a sexual nature that is done without a person’s consent” to include rape, anal sex, fondling, oral sex and sexual abuse.²⁴⁸ In a follow-on sexual assault awareness briefing during the second phase of BCT, cadets are provided the following definition of sexual assault (*italics added for benefit of discussion, below*):

- Any unwanted touching of a sexual nature that is done without a person’s consent.
- Consent is NOT given when there is force, threat of force, coercion, or when the

²⁴⁶ See the Air Force definition of sexual harassment, Air Force Instruction 36-2706, Attachment 1 (“...unwelcome...physical contact of a sexual nature...”).

²⁴⁷ USAFA Instruction 51-201, ¶ 2.12.1, Exhibit 55.

²⁴⁸ Briefing Slides, First BCT Briefing, Exhibit 88, at slide 2. Under the Uniform Code of Military Justice there are separate and distinct crimes which collectively constitute sexual assault, they are not accurately described here. See this Report, Section III.B. See also Overview of the Treatment of Sexual Offenses Under the UCMJ, Exhibit 87.

person is *alcohol/drug impaired*, mentally handicapped, underage, asleep, or unconscious.

-Touching is any fondling, kissing, sodomy or penetration.²⁴⁹

In addition to the two BCT briefings, cadets receive a *Street Smarts* briefing during their first year at the Academy. The purpose of the *Street Smarts* is to provide common sense “dos” and “don’ts” and includes a discussion of consent in relation to alcohol. Specifically, the briefing provides:

- Anyone who has forced a sexual encounter on someone who has said ‘no’ is guilty of sexual assault or rape.

- “Yes” should not be understood as consent if consent is not freely given.

- After saying “no” repeatedly, your compliance is actually “exhausted temporary acquiescence” if you give in.

- Invalid consent — when intoxicated by drugs or alcohol.²⁵⁰

The issue of consent as expressed in the *Street Smarts* briefing does not equate to a legal definition of consent. As noted by the Academy legal advisor for CASIE and the Sexual Assault Services Committee, this confusion means that CASIE advocates may “falsely raise the expectations of the victim . . . when victims are told that an intoxicated victim can never consent to sex.”²⁵¹

2. Timing of Training in Basic Cadet Training

At the onset of Basic Cadet Training, trainees are provided with a copy of *Wing Tips*, which advises trainees on a variety of matters to include the rules of engagement for their training. These rules include permissible and non-permissible actions, or training violations, that occur when a trainer assumes inappropriate authority over a trainee to include touching, verbal abuse, and sexual harassment.²⁵² In addition, *Wing Tips* provides basic trainees with a “Basic Cadet’s Bill of Rights.”²⁵³

The trainees also receive their first block of sexual assault awareness training on the third or fourth day of the first phase of Basic Cadet Training.²⁵⁴ In addition to being briefed on the Academy’s definition of sexual assault (as discussed above), cadets are informed about the policy regarding cadet victim and witness assistance and notification procedures contained in USAFA Instruction 51-201, and how incidents of sexual assault are handled at the Academy, and contact

²⁴⁹ Briefing Slides, Second BCT Briefing, Exhibit 89, at slide 11. During this briefing, cadets are counseled on sexual integrity. Both male and female cadets are told to prevent and avoid sexual assault, “both men and women should take ‘NO’ to mean ‘NO.’” *Id.* at slide 12.

²⁵⁰ Street Smarts Briefing (for females), Exhibit 90, at slide 16.

²⁵¹ Statement of Chief, Military Justice, Exhibit 91, at 6.

²⁵² *Wing Tips, Basic Cadet Training Guide*, Exhibit 96, at 2.

²⁵³ The Basic Cadets’ Bill of Rights advises trainees of their rights to include, “as a Basic Cadet you are protected from . . . Cadre violating your ‘personal bubble’ (touching you) . . . [i]nappropriate requests (i.e. meet me at midnight alone in Jacks Valley for additional counseling) . . . [u]nwanted sexual advances.” See *Wing Tips, Basic Cadet Training Guide*, Exhibit 96, at 3.

²⁵⁴ Statement of Chief, Sexual Assault Services, Exhibit 20, at 1; Male Squadron Air Officer Commanding, Exhibit 34, at 3; and Female First-Class cadet/CASIE volunteer, Exhibit 19, at 1. See Overview of Education, Training and Outreach by USAFA Sexual Assault Services, Exhibit 415. See also Briefing slides, First BCT Briefing, Exhibit 88. This is a half-hour long briefing put on by members of the Sexual Assault Services Branch to a mixed gender audience.

information.²⁵⁵ The briefing also includes practical advice on certain types of “risky” situations trainees should avoid.²⁵⁶

Basic cadet trainees receive a second sexual assault awareness briefing during their second three-week phase of Basic Cadet Training.²⁵⁷ The briefing includes information about CASIE, CASIE volunteers, the CASIE Hotline, the Victim Advocate Program, Sexual Assault Services Committee, and the Sexual Assault Awareness program.²⁵⁸ During this briefing, briefers counsel trainees on sexual integrity.²⁵⁹ The briefing advises cadets that they should be honest regarding their wants and expectations, as well as the need to seek consent from their sexual partner.²⁶⁰ Trainees are taught how to prevent and avoid sexual assault and that “both men and women should take ‘NO’ to mean ‘NO.’”²⁶¹

The Academy has conscientiously pursued a sexual assault training program that advises potential victims, and those who would provide them interim support, on available victim support services and creates an understanding of the impact of sexual assault on the victim.²⁶² However, the main thrust of this “support first training” is aimed at the basic trainees and Fourth-Class cadets, who are considered to be at the most risk for victimization.²⁶³ Unfortunately, those who are at the

²⁵⁵ Briefing slides, First BCT Briefing, Exhibit 88; Statement of Chief, Sexual Assault Services, Exhibit 20, at 1-2; Female Military Training Leader, Exhibit 31, at 2-3; Male Squadron Air Officer Commanding, Exhibit 34, at 3; and Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1. For a discussion regarding contact information and victim support services information, *see* this Report, Section III.G., Victim Support.

²⁵⁶ The presenters warn cadet trainees to avoid certain situations by being alert to inappropriate comments or jokes, physical or sexual threats, unwanted sexual advances or requests, and invasion of personal privacy. Briefing slides, First BCT Briefing, Exhibit 88, at slide 5. Briefers advise trainees they should not “be afraid to speak up about things that aren’t right . . . and, [to] look out for each other.” *Id.* at slide 6. In addition, during a separate Hygiene briefing, female cadets are advised that sexual assaults can occur at the Academy and that alcohol is a “big problem” in such incidents. *See* Briefing slides, Hygiene Briefing [for the Gals of 2006], Exhibit 97, at slide 16. This presenter explains to the female cadets that they have a lower tolerance level of alcohol than the males due to their body size, thus they are susceptible to becoming intoxicated after consuming a lesser amount of alcohol. *Id.* During the briefing, cadets are told, “You are an adult now . . . [y]ou are in control . . . [y]ou have a choice . . . YOU HAVE A RESPONSIBILITY!!!” *Id.* at 9. The briefer discusses with the female cadets that “sex [is] an adult decision with PROS (feels good, ‘adult’ action) and CONS (STDs, Pregnancy, emotional impact) . . . [i]f you make a choice, you accept responsibility for choice/action . . . #1 Abstinence.” *Id.*

²⁵⁷ *See generally* statements of Chief, Sexual Assault Services, Exhibit 20, at 1-2; Female Military Training Leader, Exhibit 31, at 2, 3; Male Squadron Air Officer Commanding, Exhibit 34, at 3; and Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1. *See also* USAFA Instruction 51-201, Exhibit 55. A member of the Sexual Assault Services Center gives this second briefing with the assistance of a volunteer from Cadets Advocating Sexual Integrity and Education (CASIE); however, the briefings are more gender oriented and the audience is broken out according to gender. Statement of Chief, Sexual Assault Services, Exhibit 20, 1-2.

²⁵⁸ *Id.* at 1-2. *See also*, USAFA Instruction 51-201, Exhibit 55. Beginning in the Fall of 2003, this briefing will include skits. Statement of Chief, Sexual Assault Services, Exhibit 20, at 1-2; Sexual Harassment Training Skits, Exhibit 98. The proposed skits include vignettes of possible coercive situations in which a First-Class cadet could place a fourth-class, the use of date rape drugs, and forced sex. *See* Sexual Harassment Training Skits, Exhibit 98.

²⁵⁹ Briefing Slides, Second BCT Briefing, Exhibit 89, at slide 11.

²⁶⁰ *Id.* at slides 2-3.

²⁶¹ *Id.* at slide 12.

²⁶² *See generally* Statements of Chief, Sexual Assault Services, Exhibit 20, at 2; Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1; CASIE Program Manager, Exhibit 99, at 4; Male First-Class cadet/CASIE Volunteer, Exhibit 100, at 1; and Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 1. *See also* USAFA Instruction 51-201, Exhibit 55; Briefing Slides, First and Second BCT Briefing, Exhibit 88 and Exhibit 89; Street Smarts Briefings, Exhibit 102 and Exhibit 90; and Sexual Assault Awareness Briefing, Exhibit 103.

²⁶³ *See generally* Statements of Chief, Sexual Assault Services, Exhibit 20, at 3; Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1; CASIE Program Manager, Exhibit 99; and Male First-Class cadet/CASIE Volunteer, Exhibit 100. *See also* USAFA Instruction 51-201, Overview of Education, Training and Outreach by USAFA Sexual

most risk may not be comprehending the information they are provided. Interviews suggest that when the trainees receive this briefing it is one of the few quiet, rather peaceful moments they have in a very busy schedule and many fall asleep.²⁶⁴ During BCT, cadets are inundated with information as to their new military life to include in-processing, policy and informational briefings, learning to march, formations, drills, customs and courtesies, and physical training.²⁶⁵ Therefore, despite the importance of the information being provided, basic trainees are significantly at risk of being too tired to fully comprehend the information.

3. Additional Training for Fourth-Class cadets

After Basic Cadet Training, cadets receive their next block of sexual assault training when they receive an hour-long briefing called *Street Smarts*. This briefing is usually given in the Fall of their first academic year.²⁶⁶ Female cadets receive their briefing from members of the Sexual Assault Services Division.²⁶⁷ The briefers advise female cadets that sexual assault occurs at the Academy (a recent briefing indicated twelve reported allegations during the Fall 2002 semester and that eighty-eight percent of female victims knew their assailant).²⁶⁸ The briefing gives cadets common sense tips on how to avoid potentially dangerous situations.²⁶⁹ In addition, the female cadets are told that they have certain rights and an upperclassman cannot simply have them disenrolled from the Academy.²⁷⁰

Male cadets also receive a *Street Smarts* briefing, which differs from the briefing given to female cadets. During the briefing given to the male cadets the presenter creates victim empathy so that she can build on and increase the male cadets' awareness.²⁷¹ The male cadets are also provided

Assault Services Exhibit 55; Briefing Slides, First and Second BCT Briefings, Exhibits 88 and 89; Street Smarts Briefings Exhibit 102 and Exhibit 90; Background Paper on USAFA Sexual Assault Services Program, Exhibit 104; and Sexual Assault Awareness Briefing, Exhibit 103.

²⁶⁴ Statement of Female Military Training Leader, Exhibit 31, at 3; Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37, at 1.

²⁶⁵ Statement of Male Deputy Group Air Officer Commanding, Exhibit 105, at 2. For further discussion about Basic Cadet Training, see this Report, Section IV.B., Cadet Authority.

²⁶⁶ Statement of Chief, Sexual Assault Services, Exhibit 20, at 2; see generally Street Smarts Briefings, Exhibits 90 and 102. This year the female Fourth-Class cadets received their briefing in the late September time period. Due to a scheduling glitch with the Training Wing, the males did not receive the briefing until January 2003. Statement of Chief, Sexual Assault Services, Exhibit 20, at 2.

²⁶⁷ Statement of Chief, Sexual Assault Services, Exhibit 20. The Chief of the Sexual Assault Services Division, the CASIE Program Manager, or a victim advocate, all of whom are female, give this briefing. *Id.*

²⁶⁸ Street Smarts Briefings, Exhibit 90, at slide 2. Female cadets are advised that Fourth-Class cadets are at the greatest risk of victimization with more than 50% of the sexual assaults reported to the Cadet Counseling Center involving Fourth-Class cadet victims. *Id.* at slide 4. On the same slide, the briefing notes that fraternization is a big problem at the Academy. *Id.*

²⁶⁹ See generally Street Smarts Briefing, Exhibit 90, at slides 5, 6, and 8. The common sense tips provided to cadets include advisements such as: stay with a group, always have a buddy, watch your drink, and don't go off with a group of males. *Id.* at slides 10, 13, and 14. The briefing teaches female cadets how to avoid being in a situation that could result in a sexual assault by applying a "person X situation prevention analysis." *Id.* at slide 19. Cadets are advised that some men believe improperly that to have sexual relations with a woman they need to get her drunk, or that some may believe that they can use alcohol to get someone to acquiesce to sex, known as "working out a yes," which the briefing advises is "in many cases illegal." *Id.* at slide 17.

²⁷⁰ Street Smarts Briefing, Exhibit 102, at slide 9.

²⁷¹ Statement of Chief of Sexual Assault Services, Exhibit 20, at 2. Neither the Chief of the Sexual Assault Services Division, nor the CASIE Program Manager, both females, gives the briefing alone. *Id.* One of the male CASIE volunteers is the co-presenter. The reasoning behind the two-presenter concept is that the female officers believed they would not have credibility to discuss these issues with the young male students. *Id.*

the same common sense “dos” and “don’ts” given to the female cadets, to include issues involving alcohol and drugs.²⁷²

During their fourth-class (freshman) year, female cadets also attend a mandatory Women’s Self Defense Course.²⁷³ The course is based heavily on the unarmed combat class that all third class (sophomore) cadets must take; therefore, female cadets receive this training again when they are in their second class (junior) year.²⁷⁴ The fourth-class females’ self-defense course is offered/attended throughout the academic year, because to have an effective class, ten students are needed and this is difficult to achieve given scheduling conflicts.²⁷⁵ Due to the small number of female cadets and the fact that female intercollegiate athletes attend the course only in their off-season, it becomes difficult to hold all courses during the Fall semester.²⁷⁶ The Course Director believes that it would be more advantageous for the female Fourth-Class cadets to receive this training as early as possible; thereby providing at-risk women the essentials to protect themselves from any would be assailant.²⁷⁷

4. Training for Upperclass Cadets.

Each April, cadets are required to attend a portion of the Sexual Assault Awareness Month activities.²⁷⁸ These activities take place in conjunction with the fifth period of the day, which is devoted to the military training block of instruction, and specifically includes one of the panel discussions.²⁷⁹ These activities serve as another means to accomplish sexual assault cadet professional military education as required by USAFA Instruction 51-201.²⁸⁰ In addition to this training, upperclass cadets receive other instruction about sexual assault in the form of their Behavior Science 200 class block in the Spring of their third cadet year.²⁸¹ During this instruction

²⁷² See generally Street Smarts Briefing, Exhibit 102.

²⁷³ Memorandum for Record, Interview with Self-Defense Coach, Exhibit 106, at 1.

²⁷⁴ *Id.* In addition to training on hand-lapel attacks, rear attacks, bear hugs and hammerlocks, the cadets receive instruction on how to avoid rape, date rape, and are taught self-esteem. *Id.* In addition to the Woman’s Self Defense Course, and the Unarmed Combat Course, all cadets are required to take Unarmed Combat II as Second-Class cadets. *Id.*

²⁷⁵ *Id.* at 1.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Even though cadets are required to attend, many do not. Statement of Former Chief, Sexual Assault Services, Exhibit 83, at 3.

²⁷⁹ Statement of Former Chief, Sexual Assault Services, Exhibit 20, at 1. The focus of the panel discussions is based on a cadet’s year group: Fourth-Class cadets focus on awareness; Third-Class cadets focus on prevention; Second-Class cadets focus on assistance; and First-Class cadets focus on “professionalism.” During the 2002 activities, depending on a cadet’s year group, a cadet could attend a variety of panel discussions, such as: A Survivor’s Panel, Drug-Facilitated Rape, a Friends and Family Panel, Sex & Communication, Offender Profiling, Child Abuse & Domestic Violence, and Air Force Policy on Sexual Assault.

²⁸⁰ See generally statements of Chief, Sexual Assault Services, Exhibit 20, and CASIE Program Manager, Exhibit 99. This is done to fulfill the USAFA Instruction 51-201 requirement to raise the level of awareness of, and prepare cadets to be sensitive and knowledgeable about sexual assault. *Id.* The program includes panel discussions, motivational speakers, an art show, and an information booth. The program began as a one week program and grew into a month long program. See statement of Chief, Sexual Assault Services, Exhibit 20. In addition, there is a *Take Back the Night* celebration and an optional statistics briefing. *Id.* The briefing presents the number of sexual assault reports to the Cadet Counseling Center from 1985 to 2002. See generally Sexual Assault Awareness Month Schedule (April 2002), Exhibit 107.

²⁸¹ See generally Statements of Victim Advocate Coordinator, Exhibit 50, at 72-73; and Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 1.

period, cadets view a presentation called the *Seattle Tape*, the purpose of which is to develop victim empathy among males for female sexual assault victims.²⁸²

In addition to formal presentations, cadets have access to a variety of information regarding sexual assault, by means of the CASIE volunteers.²⁸³ Each Cadet Squadron has a CASIE volunteer who is a cadet whose duties include acting as a point of contact for victims, as well as educating their squadron about sexual assault deterrence issues.²⁸⁴ Squadrons also receive information throughout the year during their meetings at the Charge of Quarters desk, including information about sexual assaults.²⁸⁵

Although not considered part of the sexual assault training, the Academy has Human Relations Education Officers (HREOs), who are cadets who act as human relations officers in their squadrons at the Cadet Group and Squadron levels.²⁸⁶ A HREO's responsibilities consist of helping individuals resolve disagreements, much akin to acting as a mediator.²⁸⁷ In addition, HREOs teach people to respect racial, ethnic and gender diversity, but their responsibilities do not include handling instances of sexual assault or sexual harassment.²⁸⁸

5. Training for Academy Staff and Leadership

Air Officers Commanding (AOCs) and Military Training Leaders (MTLs) receive a briefing from the Sexual Assault Services Division during AOC/MTL school. The purpose of the briefing is to make them aware of CASIE, the history behind the program, the services available to victims, notification procedures, and the number of reports made to the Cadet Counseling Center.²⁸⁹ The Cadet Counseling Center gives the faculty an orientation briefing, during which they receive information on how to identify cadet distress, the USAFA Instruction 51-201 policy, and how to interact with victims of sexual assault.²⁹⁰

²⁸² Statement of Chief, Sexual Assault Services Division, Exhibit 20. The *Seattle Tape* is the taped presentation of a Seattle police officer to other police officers. The presenter describes the seemingly innocuous event of a patrolman getting out of his police car to move a trash can that had rolled into an alley. As he is bent over the trash can two individuals attack him and take his gun away from him. The police officer is then forced to perform fellatio on one of the individuals and is anally sodomized by the other. The presenter then discusses the emotional challenges the police officer/victim encounters when he has to discuss the matter with investigating law enforcement, medical personnel, family, friends, and coworkers. Memorandum for Record, *Seattle Tape*, Exhibit 108.

²⁸³ See generally Statements of Chief, Sexual Assault Services, Exhibit 20, at 2; CASIE Program Manager, Exhibit 99, at 2, 4; Female First-Class cadet/CASIE Volunteer, Exhibit 19; and Female Second-Class cadet/CASIE Volunteer, Exhibit 109, at 3-4.

²⁸⁴ USAFA Instruction 51-201, Exhibit 55. See also Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 1, Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2, and CASIE Program Manager, Exhibit 99, at 2.

²⁸⁵ Statement of Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2.

²⁸⁶ Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 3. See also Memorandum for Record, Interview with First-Class cadets, Exhibit 111.

²⁸⁷ Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 2. See also Memorandum for Record, Interview with First-Class cadets, Exhibit 111.

²⁸⁸ Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 3. See also Memorandum for Record, Interview with First-Class cadets, Exhibit 111. HREOs are taught to refer instances of assault or harassment to the Inspector General's office or other appropriate channels such as CASIE. *Id.*

²⁸⁹ See Briefing Slides, USAFA Sexual Assault Services, Exhibit 112. Similar information is briefed during Sexual Assault Awareness Month (SAAM).

²⁹⁰ See generally Briefing Slides, Cadet Counseling Center, Exhibit 113.

6. Sexual Harassment Training

The Center for Character Development, offers sexual harassment education to all Fourth-Class cadets, as well as to basic trainees.²⁹¹ The sexual harassment training conducted during Basic Cadet Training is performed by active duty personnel who are trained to the Department of Defense Equal Opportunity standard.²⁹² Basic trainees are given a two-hour overview of the Department of Defense's sexual harassment policy, what constitutes sexual harassment, and the agencies that handle complaints of sexual harassment.²⁹³ Fourth-Class cadets receive eight, fifty-minute Human Relations lessons that include professional conduct (examples of unprofessional relationships within the Cadet Wing), professional interaction and behavior, and resolving issues of sexual harassment.²⁹⁴

7. Other Related Training

We did identify other courses related to leadership and character in both the Department of Behavioral Sciences and Leadership (which includes the Cadet Counseling Center) and the Center for Character Development.

The Department of Behavioral Sciences & Leadership offers a mandatory, class to Fourth-Class cadets to acquaint the cadets with leadership, with the emphasis on how to be an assertive follower.²⁹⁵ Currently, this is the only mandatory leadership class offered by the Department.²⁹⁶

In addition to the instruction provided by the Department of Behavioral Sciences, the Center for Character Development offers several programs related to character. However, their character courses are not a prerequisite for graduation.²⁹⁷

The Center for Character Development offers an annual character and leadership symposium.²⁹⁸ Cadets are not required to attend the character and leadership symposium; however, if they do not attend, they are required to write a paper on one of the presenters' works.²⁹⁹ The 10th Annual National Character & Leadership Symposium included sessions on *Ethics of Leadership*, *Leadership Ideas for Successful Character Development*, *Leadership from the Inside Out*, and *Come On! Be a Bud! On the Evils of Loyalty, Friendship, and Buddiness*.³⁰⁰

²⁹¹ See Background Paper on Center for Character Development Sexual Harassment Education, Exhibit 114.

²⁹² See Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 2.

²⁹³ See Center for Character Development's Human Relations' Training/Education Plan for Basic Cadet Trainees, Exhibit 114.

²⁹⁴ See Background Paper on Center for Character Development Sexual Harassment Education, Exhibit 114.

²⁹⁵ See Memorandum for Record, Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 115; Briefing Slides, Department of Behavioral Sciences & Leadership, Exhibit 116, at 3.

²⁹⁶ See Memorandum for Record, Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 115. The course was reduced from 4.5 to 3.0 hours in 2002. *Id.*

²⁹⁷ See Memorandum for Record, Interview with Deputy Director, Center for Character Development, Exhibit 117. Cadets must complete specific core (non-elective) courses to be eligible for graduation. UNITED STATES AIR FORCE ACADEMY CATALOG, at 41-43 (2002-2003 ed.), Exhibit 6. None of the character courses are required for graduation. *Id.*

²⁹⁸ See Extract of Brochure: The 10th Annual National Character & Leadership Symposium, Exhibit 118.

²⁹⁹ See Memorandum for Record, Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 115.

³⁰⁰ See Extract of Brochure: The 10th Annual National Character & Leadership Symposium, Exhibit 118.

The Center for Character Development offers Fourth-Class cadets a required three-hour interactive seminar that constitutes a military training requirement, which is referred to as *VECTOR*, Vital Effective Character Through Observation & Reflection.³⁰¹ *VECTOR* topics include examining the cadets' personal values, purpose, and the influences they have on others.

Second-Class cadets attend an "eight hour offsite, facilitated seminar [with] a focus on effective communication, interpersonal skills, teambuilding, integration of human relations, and their effects on leadership."³⁰² This seminar, known as *LIFT*, is "being prototyped to only a portion of the [Second-Class cadets], with the anticipation that all [S]econd [C]lass cadets will attend beginning in academic year 2003/2004."³⁰³ *LIFT* includes experiential learning by means of team building exercises, the purpose of which is to "improve effective communication, interpersonal skills, positive motivation, trust, and team-leadership accountability."³⁰⁴ During *LIFT*, cadets take a personality style assessment test.³⁰⁵

The Center for Character Development offers First-Class cadets instruction with a "[f]ocus on [o]rganization [e]xcellence" in the form of the Capstone Academy Character Enrichment Seminar (ACES), an eight-hour session facilitated by active duty members. The "[f]ocus is on doing the right thing, concentration on actual USAF member ethical dilemmas with some [discussion] of which involve sexual harassment or unprofessional relationships."³⁰⁶ Attendees at Capstone ACES generally include Air Officers Commanding, Military Training Leaders, coaches, chaplains, staff, and "other personnel routinely involved with cadets."³⁰⁷ Capstone ACES is offered throughout the Fall and Spring semester, allowing the cadet to attend that program which best fits into his, or her, schedule.³⁰⁸ During Capstone ACES, First-Class cadets are given the Academy's definition of character, which is "[t]he sum of those qualities of moral excellence which stimulates a person to do the right thing which is manifested through right and proper actions despite internal or external pressures to the contrary."³⁰⁹ Attendees learn that with the development of character comes certain outcomes to include "Officers with forthright integrity who voluntarily decide the right thing to do and do it."³¹⁰

³⁰¹ See United States Air Force Academy Center for Character and Leadership Seminars and Workshops Paper, Exhibit 119. This is the first year the Center for Character Development has implemented this program, which was formerly Eagle ACES. *Id.*

³⁰² See Background Paper on Center for Character Development Sexual Harassment Education, Exhibit 114.

³⁰³ See United States Air Force Academy Center for Character and Leadership Seminars and Workshops Paper, Exhibit 119.

³⁰⁴ See *id.*

³⁰⁵ See *id.* The "assessment tool" is designed for "cadets [to] better understand others as they better understand themselves." *Id.*

³⁰⁶ See Background Paper on Center for Character Development Sexual Harassment Education, Exhibit 114.

³⁰⁷ See Pamphlet, Capstones ACES, Exhibit 119. It should be noted that in August 2002, two special ACES were conducted for the entire AOC/MTL staff, using twenty case studies to include scenarios in which the AOC/MTL is concerned that one of the cadets has been sexually assaulted. See *ACES for AOC/MTLs Scenarios*, Exhibit 119.

³⁰⁸ See Pamphlet, Capstones ACES, Exhibit 119.

³⁰⁹ See Brochure, *Academy Character Enrichment Seminar, The Character Capstone*, Exhibit 119, at 2.

³¹⁰ See Brochure, *Academy Character Enrichment Seminar, The Character Capstone*, Exhibit 119, at 3. Attendees are taught that "[o]fficers with forthright integrity voluntarily decide the right thing to do and do it in both their professional and private life . . . their inclination to do the right thing is consistently followed by actually doing what they believe they should do and taking responsibility for their choices." *Id.* In addition, attendees learn that "[o]fficers who respect human dignity believe that individual differences of race, gender, ethnicity, and religion are to be valued . . . [o]fficers who respect and value others act in ways which support and encourage others to develop to their fullest potential; they do not demean or debase others." *Id.*

The other “leadership” instruction that cadets receive is from the Military Strategic Studies Division, 34th Wing Education Group, in the form of the MSS100, MSS311 and M411 blocks (there are also the 311H and 411H blocks that are for the students in the honors program).³¹¹ None of these courses are specifically designed to teach leadership; rather, they have embedded in them aspects of professionalism and ethics.³¹²

8. Assessment

Our examination of the content of the Academy’s sexual assault prevention and awareness training indicates that while extensive, there is little that addresses the moral, leadership, or character component of deterrence, *i.e.*, why one should not victimize others, or allow other cadets to engage in risk prone practices. As previously discussed, the Academy offers a number of sexual assault awareness and character briefings;³¹³ however, none of these briefings makes the actual connection that persons of character do not place themselves in certain situations, take advantage of others in what could become a compromising situation, or condone such behaviors in others. Specifically, there is no direct analysis in these briefings that persons of character do not sexually assault others, do not permit others to sexually assault another person, and they do not protect anyone who commits such an act.

D. The Unique Reporting System

The Academy’s program includes a unique, confidential reporting system for victims of sexual assault that differs from the process used in the rest of the Air Force.³¹⁴

1. The Air Force’s reporting processes.

There are primarily three means by which members of the Air Force who are not cadets can report incidents of sexual assault. They can:

- Report incidents to their chain of command.³¹⁵

³¹¹ See Memorandum for Record, Interview with Director of Institutional Technology, 34th Training Wing Education Group, Exhibit 120.

³¹² See *id.* The Director of Institutional Technology indicated the courses were as follows: the MSS100 is “Military Theory and Aero/Space Power”; 311 is “Foundation of Aero/Space Power,” and 411 is “Introduction to Joint and Multinational Operations.” *Id.*

³¹³ The Academy defines “character” as the “[q]ualities of moral excellence which compel a person to do the right thing despite pressure or temptations to the contrary.” Briefing Slides, Center for Character Development, History, Vision, Desired Outcomes, Developmental Plan, Organization, Programs & Challenges, Exhibit 121, at slide 5. The Academy’s character program is focused on character as it relates to leadership and the thrust of the character courses is aimed at personal influence (competence, purpose, direction), interpersonal skills (shared vision, supportive climate), team building (risk taking, innovation, creativity), and organization excellence (transformation, unity of purpose). Although a few of the briefings offered at the non-mandatory National Character & Leadership Symposium discuss character in a moral context, they do not go the extra step and discuss character, morals and sex. See Extract of Brochure: The 10th Annual National Character & Leadership Symposium, Exhibit 118.

³¹⁴ A confidential hotline was established in 1993 for cadet reporting of sexual assaults. Statement of Lt Gen Hosmer, Superintendent (1991 to 1994), Exhibit 45, at 16-17. Subsequently, the confidential system was formalized in 1997 through the development of an Academy Instruction (USFA Instruction 51-201) in coordination with the Air Force Inspector General, the Air Force Judge Advocate General, the Air Force Office of Special Investigations, and the Air Force Surgeon General. Statement of Maj Gen Lorenz, Exhibit 52, at 33.

³¹⁵ Statements of CASIE Program Manager, Exhibit 99, at 3; Victim Advocate Coordinator, Exhibit 50, at 90.

- Report incidents to either Security Forces or the Air Force Office of Special Investigations.³¹⁶
- Report incidents to a medical provider.³¹⁷

These three means of reporting an offense would not be confidential and would result in an investigation. In the Air Force, there are other options available where a victim can confidentially discuss an assault and its surrounding circumstances, but those means would not be considered official reporting and would not result in an investigation. (For example, the victim could talk with an Air Force Chaplain.)³¹⁸

The practical effect of the official reporting mechanisms available in the Air Force is that information included in those reports is available to the chain of command. Therefore, commanders have the ability to pursue the investigation of such criminal matters, handle resultant disciplinary actions, and provide for the care and support of victims.

(Pursuant to the Secretary and Chief of Staff of the Air Force's *Agenda for Change*, all allegations of sexual assault at the Academy will be reported to the officer chain of command.³¹⁹ Thus, Academy procedures will have the same effect as the procedures available to non-cadet Air Force members. In addition, the *Agenda for Change* calls for a "first responder" team to be notified so that elements of investigation, legal process and victim support may be coordinated.)

³¹⁶ Security Forces has authority for localized investigations of the sexual offenses of carnal knowledge, indecent exposure, sexual misconduct, and voyeurism on a case-by-case basis. Air Force Instruction 71-101 V1, at Attachment 2, Rule 25C. The AFOSI has the authority to investigate the sexual offenses of rape, sodomy, carnal knowledge, child molestation, or cases involving serious bodily harm. *Id.* at Attachment 2, Rule 25B. The applicable Air Force Instructions do not contain any provision for handling such information on a confidential basis. *See* Air Force Instruction 51-201, Administration of Military Justice; Air Force Instruction 31-206, Security Investigations Program; and Air Force Instruction 71-701 Vol. 1, Criminal Investigations. These instructions note that the release of information from any such investigation is subject to the Privacy Act; however, the Privacy Act should not be confused with the concept of confidentiality. Privacy Act of 1974, 10 U.S.C. § 8013. Confidentiality is a privileged communication in law — a communication between persons who have a special duty of fidelity and secrecy toward each other. Whereas confidentiality is a recognized privileged communication, privacy is freedom from unauthorized intrusion.

³¹⁷ Air Force Instruction 44-102, Community Health Management, ¶ 2.36. Ordinary Air Force crime victims are entitled to care at military medical facilities. The fact that a victim may present for medical care would not necessarily be considered the reporting of a crime; however, medical personnel have an affirmative duty to report suspected criminal incidents to the AFOSI, to include the crimes of aggravated assault, rape, or other sex offenses as defined by the Uniform Code of Military Justice (UCMJ). Air Force Instruction 44-102, ¶ 2.36. Thus, such a presentation would be tantamount to a *de facto* report. With the exception of a narrow patient-psychotherapist privilege, the Air Force does not provide for a doctor-patient privilege. *See* this Report, Section III.D.5., Fear of reporting, the significance of confidentiality, and confidentiality in the Air Force.

³¹⁸ MCM, MIL. R. EVID. 503 (2002) provides that "[a] person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant if such communication is made either as a formal act of religion or as a matter of conscience." *Id.* However, the Chief of Chaplains advises all chaplains to encourage victims of sexual assault to report the incident and get the proper support. Comment from Chief of Chaplains, Working Group member. If a victim consults with an Area Defense Counsel, the attorney-client privilege would apply. "A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation" unless certain exceptions are present. Air Force Rules of Professional Responsibility, Rule 1.6. Area Defense Counsel are certified by The Judge Advocate General. *See* Air Force Instruction 51-103, Designation and Certification of Judge Advocates, ¶ 3. Area Defense Counsel enter into attorney-client relationships with persons who are suspected of, or are being investigated for a crime. For purposes of this discussion, if during the course of such an attorney-client relationship an individual told the Area Defense Counsel that he or she was the victim of a crime, the Area Defense Counsel could not disclose that information without the client's permission.

³¹⁹ *Agenda for Change*, Exhibit 4.

2. The Academy's reporting process.

[Note: Except where noted, the following describes the Academy procedures as they have existed prior to the implementation of the *Agenda for Change*, announced on March 25, 2003.]

Cadets have been able to avail themselves of all the same reporting systems that active duty Air Force members have used. Prior to implementation of the *Agenda for Change*, they could also use an Academy-specific reporting process that included limited confidentiality as provided under the auspices of the Cadet Counseling Center.³²⁰ Under this unique process, a cadet could come forward to allege that a sexual assault had occurred without being required to provide detailed information upon which action could be taken. To a significant degree, the victim retained the option to remain anonymous and to refuse to make a formal report to AFOSI or the chain of command.³²¹ This could prevent command from having the ability to deal with offenders and result in the commissioning of such offenders as Air Force officers.³²²

Under the Academy Instruction, all USAFA staff and cadets receiving information about a sexual assault have an affirmative duty to notify the Cadet Counseling Center about the assault.³²³ There is no requirement to provide the victim's name or any other identifying data. The report is to contain only as much information as the cadet victim is willing to provide after being briefed on the Cadet Counseling Center rules of confidentiality, and thus might not contain the identity of the victim or that of the assailant.³²⁴ After receiving notice of a sexual assault, the Cadet Counseling Center is required to notify the Commandant (the Vice Commandant in accordance with the

³²⁰ Sexual Assault Services Reporting and Notification Form, Exhibit 122; Briefing Slides, First BCT Briefing, Exhibit 88, at slide 7; Briefing Slides, Second BCT Briefing, Exhibit 89, at slides 6, 13, & 20. *See also* Statements of CASIE Program Manager, Exhibit 99, at 5, 6; Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2; and Statement of Victim Advocate Coordinator, Exhibit 50, at 4; and *see* Cadet Counseling and Leadership Development Center Statement of Limited Confidentiality, Exhibit 123.

³²¹ USAFA Instruction 51-201, at Section 2G, Exhibit 55. "In many cases, a victim is unwilling to report an assault to Academy officials, law enforcement, or command authorities. In these cases, the victim may choose to confide in a trusted person in an effort to solicit support and advice without invoking investigative or other official action. Consequently, the victim may ask the person he or she reports to not to disclose any information about the assault to anyone else." *Id.* at ¶ 2.8.1.2. "If the victim is willing to make a formal complaint (i.e., report the assault to law enforcement authorities), the person the cadet victim reported to should immediately notify AFOSI . . . [and] if the crime is recent, the 10th SFS [Security Forces Squadron] need to be called immediately to secure any potential crime scene." (Emphasis added.) *Id.* at ¶ 2.8.1.1. When calls are received on the Academy's Sexual Assault Hotline (see *infra*) the caller does not have to provide any specific information (such as the type of assault, where it occurred, when, number/identity of assailant) and is not required to give his or her name. In some instances the caller is assigned a name or initials so the victim can retain his or her anonymity while Sexual Assault Services is also able to track services provided to the individual. Statement of CASIE Program Manager, Exhibit 99, at 3. The Counseling Center Statement informs cadets that "[o]utside agencies/personnel only have access to information with a validated need-to-know. Except as noted above, release of personal information requires your signed authorization." Cadet Counseling and Leadership Development Center Statement of Limited Confidentiality, Exhibit 123 (emphasis in original). *See, infra*, regarding exceptions.

³²² *See* Statement of Brig Gen Gilbert, Exhibit 10, at 52-53.

³²³ USAFA Instruction 51-201, ¶ 2.8.1.2, Exhibit 55. The recipient of the information "should strongly encourage the cadet to seek immediate medical and support services from Academy agencies as needed (i.e. Cadet Clinic, Academy Hospital, Cadet Counseling and Leadership Development Center, chaplains, Life Skills Center) and encourage the victim to report the incident to law enforcement and/or command authorities as appropriate." *Id.* at 2.8.1.

³²⁴ *See* Statements of CASIE Program Manager, Exhibit 99, at 3-4; Female Second-Class cadet, CASIE volunteer, Exhibit 109, at 2; and Statement of Victim Advocate Coordinator, Exhibit 50, at 63-64.

Academy's actual practice),³²⁵ the 10th Security Forces Office of Investigations, and a victim advocate.³²⁶ Absent the victim's consent, the Commandant (or Vice Commandant) and Security Forces are not provided names or identifying information.³²⁷ The AOC will not be notified unless the victim so elects.³²⁸

The notice to Security Forces Office of Investigations is general in nature, lacking the individual's name or any other identifying data. USAFA Instruction 51-201 states, "10[th] SFS/SFOI [Security Forces Office of Investigations] is notified because they are responsible for monitoring and responding to trends related to sexual assault. Trend analyses usually do not require names or identifying information; therefore, only relevant information about the nature of the crime is reported to 10[th] SFS/SFOI [Security Forces Office of Investigations]."³²⁹

Reports of sexual assault can also be made through a system of cadet volunteers known as CASIE, including a Hotline operated by these volunteers.³³⁰ When a Hotline call is received, the volunteer notifies an on-call victim advocate of the situation. In turn, the victim advocate is required to notify, by telephone, the Security Forces Office of Investigations and the Commandant (the Vice Commandant in accordance with the Academy's actual practice) without giving identifying information.³³¹ The information received in the CASIE system can also come from face-to-face exchanges between a CASIE volunteer and a victim, or disclosures made to a third party when the third party notifies the Cadet Counseling Center of the report.³³²

As soon as practicable, the information received about sexual assaults is given to the CASIE Program Manager who places the information onto a tracking form that is sent to the Commandant's office.³³³ This tracking form has no identifying features regarding the victim.³³⁴ Even though the delivery of the tracking form is supposed to follow the oral notification,³³⁵ in actual practice there have been instances during which notification, both oral and written, occurred simultaneously.³³⁶

³²⁵ USAFA Instruction 51-201, at ¶ 2.8.1.2.1, Exhibit 55. The instruction notes that "the Commandant is the commander responsible for both cadet victims and cadet perpetrators . . . [t]his General Officer must ensure the safety of each cadet and the good order and discipline of the entire Cadet Wing." *Id.*

³²⁶ USAFA Instruction 51-201, at ¶¶ 2.8.1.2.2 and 2.8.1.2.3, Exhibit 55.

³²⁷ Statement of Victim Advocate Coordinator, Exhibit 50, at 57.

³²⁸ USAFA Instruction 51-201, at ¶ 2.8.1.2, Exhibit 55.

³²⁹ USAFA Instruction 51-201, at ¶ 2.8.1.2.2, Exhibit 55. Despite the requirement, so little information has been provided to the Security Forces Squadron that development of any trend analyses has been rendered practically impossible. *See* Memorandum for Record, Group Interview with Security Forces Personnel, February 21, 2003, Exhibit 125, at 1. *See also* this Report, Section V.B., 10th Security Forces Squadron, for additional information on Security Forces responsibilities.

³³⁰ The volunteers are part of Cadets Advocating Sexual Integrity and Education (CASIE), a support organization for cadet victims, operated primarily by cadets. For a complete discussion, *see* this Report, Section III.G., Victim Support.

³³¹ Statement of CASIE Program Manager, Exhibit 99, at 3. The CASIE Intake Form lists the following three required actions: offer to assign the victim a victim advocate (if one is assigned that person is to be identified); notify the Commandant of the incident; and, notify the Security Forces Office of Investigations. *See* Sexual Assault Services Tracking Form, Exhibit 75. Statement of Victim Advocate Coordinator, Exhibit 50, at 57. USAFA Instruction 51-201, at ¶ 2.8.1.2, Exhibit 55.

³³² Statement of Victim Advocate Coordinator, Exhibit 50, at 53 and 90.

³³³ Statement of CASIE Program Manager, Exhibit 99, at 3. *But see* the Victim Advocate Coordinator's Statement in which she states that she typically fills out the tracking form. Statement of Victim Advocate Coordinator, Exhibit 50, at 57.

³³⁴ Statement of Victim Advocate Coordinator, Exhibit 50, at 63.

³³⁵ Statement of CASIE Program Manager, Exhibit 99, at 3.

³³⁶ Statement of Victim Advocate Coordinator, Exhibit 50, at 58.

The Cadet Counseling Center prepares the tracking form based on information provided by the person to whom the report was originally made (e.g., CASIE representative, Counseling Center Counselor, victim advocate, AOC, etc.). Thus, the quality of the information provided to command is dependent upon the person who gathered the information, the questions asked of the victim, and whatever information the victim is willing to provide.³³⁷ As a result, the Vice Commandant, or Commandant, may have very little information to act upon.³³⁸

3. The Academy's confidentiality policy and command override.

Whether a cadet sexual assault victim contacts the Cadet Counseling Center via the CASIE Hotline or physically presents to the Cadet Counseling Center, the individual is made aware of the "Limited Confidentiality" policy of the Cadet Counseling Center.³³⁹ According to the policy, the victim's desire to keep his or her name or details of the assault confidential may not be honored in all cases. Specifically, the Statement of Limited Confidentiality tells victims that the policy places limits on confidentiality in some circumstances, such as: if the report shows the victim may harm herself or others, if the victim reports child abuse which has not been previously reported, if there is evidence that the victim's behavior is putting his or her health or welfare at risk, and that relevant information may be released to investigative or judicial authorities if approved by the Superintendent ("override authority").³⁴⁰

As noted above, the last exception to confidentiality is known as the "override authority." USAFA Instruction 51-201 reflects this override authority,³⁴¹ which allows the Superintendent to authorize a breach of the limited confidentiality policy in certain circumstances. The Instruction states that after being notified of a sexual assault incident by the Cadet Counseling Center, the Commandant then advises the "Superintendent on the merits and limitations of authorizing an investigation."³⁴² This provision provides a mechanism by which Academy leadership could have access to otherwise confidential information. Although the tracking form was developed to ensure command received notification of all reported allegations of sexual assault, it was not designed to provide all the information that might be necessary for command to determine if an investigation was required. Prior to use of the form, information that a sexual assault occurred could have been provided to command verbally or not at all.³⁴³ We found documentary information of two instances

³³⁷ See Statements of CASIE Program Manager, Exhibit 99, at 3; and Female Second-Class cadet/CASIE Volunteer, Exhibit 109, at 2; and Statements of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 30; and Victim Advocate Coordinator, Exhibit 50, at 63, 66.

³³⁸ Statement of Col Eskridge, Exhibit 124, at 27; Statement of Brig Gen Gilbert, Exhibit 10, at 52-53; Statement of Lt Gen Oelstrom, Exhibit 63, at 27-28 (screening of information is a weakness in the system); Statement of CASIE Program Manager, Exhibit 99, at 3 (victims are not required to provide information about the incident); Statement of Victim Advocate Coordinator, Exhibit 50, at 63.

³³⁹ See Sexual Assault Services Reporting and Notification Form, Exhibit 122; Briefing Slides, Second BCT Briefing, Exhibit 89, at slide 8; Statements of CASIE Program Manager, Exhibit 99, at 3; Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 1; Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2. Victims who go to the Counseling Center are given a copy of the policy. See Statement of Victim Advocate Coordinator, Exhibit 50, at 13.

³⁴⁰ Cadet Counseling and Leadership Development Center Statement of Limited Confidentiality, Exhibit 123. The statement lists a total of nine examples of limits on the confidentiality offered by the Center.

³⁴¹ The command override authority was not part of the 1993 program. Statement of Lt Gen Hosmer, Superintendent (1991 to 1994), Exhibit 45, at 18-19.

³⁴² USAFA Instruction 51-201, at ¶ 2.8.1.2.1, Exhibit 55.

³⁴³ Statement of Brig Gen Welsh, Exhibit 64, at 27-29. Brigadier General Welsh said the tracking form was a notification tool to ensure an incident "didn't fall through the cracks." In his view, it was a starting point and often led

when command issued an override of victim confidentiality.³⁴⁴ Also, witnesses relate that the Superintendent has exercised this override provision on occasion.³⁴⁵

In some circumstances, the Vice Commandant may review the confidential information received and request additional details on the case from the Victim Advocate Coordinator to the extent that the victim will permit.³⁴⁶ He or she may also have a victim advocate strongly encourage the victim to voluntarily make a formal complaint, based on concern for the safety of the Cadet Wing.³⁴⁷ Otherwise, unless the Superintendent can determine that the need for an investigation outweighs the victim's interest in limited confidentiality, neither enforcement agencies nor leadership would be able to investigate the underlying crime, or for that matter, directly participate in support of the victim.³⁴⁸

As noted at the beginning of this section, command is not limited to receiving information solely through the confidentiality provisions administered by the Cadet Counseling Center. Command can receive information from individuals outside the confidential process to include Air Officers Commanding, other cadets, or even the victim.³⁴⁹

4. Waiver of reporting requirement.

Air Force Instructions require medical personnel to report "incidents involving...aggravated assault, rape, [and] other sex offenses...to the Air Force Office of Special Investigations (AFOSI) or other authorities as appropriate."³⁵⁰ Contrary to this requirement, the Academy Instruction on

him to contact the Counseling Center or others to get additional information that would enable command to determine how to proceed. Statement of Brig Gen Welsh, Exhibit 65, at 12-13.

³⁴⁴ Sexual Assault Services Tracking Sheets, Exhibit 301. One tracking form from academic year 2000/2001, signed by Brig Gen Welsh, and another from academic year 2001/2002, annotating override action by Lt Gen Dallager, were reviewed by the team. *Id.*

³⁴⁵ See statements of Lt Gen Dallager, Exhibit 71, at 63-64; Vice Commandant (December 2002 to March 2003), Exhibit 124, at 31.

³⁴⁶ Statement of Maj Gen Lorenz, Exhibit 52 at 38-39; Statement of Vice Commandant (December 2002 to March 2003), Exhibit 52, at 31.

³⁴⁷ See Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 30; *See also* Statements of Maj Gen Lorenz, Exhibit 52, at 38-39; and Lt Gen Hosmer, Exhibit 45, at 19.

³⁴⁸ See generally USAFA Instruction 51-201, at Section 2G, Exhibit 55. See Statement of Brig Gen Gilbert, Exhibit 10, at 52-53. See also Statement of Lt Gen Dallager, Exhibit 71, at 63, 73 ("...the current mechanism of feeding [information] into the command line does so either incompletely or not with enough specificity that the command line has a reasonable view of what's happened...enough detail to make a reasoned judgment on whether...to pursue an investigation..." *But see* Statement of Brig Gen Welsh, Exhibit 64, at 32 (in which he states the he believed the information provided was sufficient to make the initial decision whether or not to override victim confidentiality). See also statement of Victim Advocate Coordinator, Exhibit 50, at 64 (indicating that in every rape case the victim has wanted to go forward and that she would force the issue if necessary). In addition, neither Brig Gen Welsh nor Brig Gen Gilbert recall receiving general trend information from the Counseling Center, leaving them unaware of the larger sexual assault picture, as well as individual cases. See Statements of Brig Gen Gilbert, Exhibit 10, at 52-53; and Brig Gen Welsh, Exhibit 64, at 36, 37. *But see* Statement of Maj Gen Lorenz, Exhibit 52, at 31-32, in which he states that he received trending information and believed the process worked well.

³⁴⁹ The victim controls who he or she tells about the incident and is not precluded from notifying command. See Statement of Commander, 34th Training Group, Exhibit 23, at 51-52; Statement of Female Military Training Leader, Exhibit 128, at 10; Statement of Male Squadron Air Officer Commanding, Exhibit 35, at 6. USAFA Instruction 51-201, Exhibit 55, does not prohibit these individuals from providing information to command outside the confidential process. (*But see* USAFA Instruction 51-201, ¶ 2.8.1.4, providing that, when AOCs report sexual assault incidents to their chain of command, names and identifying information will be reported only with the victim's permission.)

³⁵⁰ Air Force Instruction 44-102, Community Health Management, ¶ 2.36. (November 17, 1999). This Instruction applies to all personnel assigned to or working in Air Force medical treatment facilities and aeromedical evacuation

Cadet Victim/Witness Assistance states that “[m]edical personnel in the Academy’s [Counseling Center], Cadet Clinic, Emergency Room, and Life Skills Center are waived from reporting all cases of suspected rape or sexual assault against cadet victims directly to the Office of Special Investigations (OSI) as specified in Air Force Instruction 44-102, Chapter 1, Section U, Paragraph 1.52.1.”³⁵¹ Instead, medical personnel will report all cases of suspected sexual assault against cadet victims concurrently to [the Cadet Counseling Center] and to the Commandant of Cadets. The Commandant is not provided the identity of the victim or the assailant, unless the victim consents.³⁵²

The deviation from the requirement that medical providers notify AFOSI of incidents of sexual assault was accomplished in reliance on a letter from the Air Force Surgeon General dated May 9, 1997.³⁵³ (It appears the basis for seeking this waiver was the Academy’s determination that victims of sexual assault would be more willing to seek support services if they could do so in a confidential manner.)³⁵⁴ The waiver explicitly indicated that it was granted on a temporary basis and was “subject to review in one year.”³⁵⁵ The Working Group found no subsequent waiver or review of the waiver. The need for a subsequent waiver arises from an Air Force Instruction that requires that a new waiver be obtained when the underlying Instruction is subsequently revised.³⁵⁶ The Instruction that the Air Force Surgeon General waived in May 1997 was revised July 1, 1998 and again in November 1999.³⁵⁷ Since no waiver was issued other than in 1997, the Academy had no authority to disregard the reporting requirement found in Air Force Instruction 44-102, and thus no basis for medical personnel to not advise AFOSI in each instance.³⁵⁸

The Working Group found that the Academy’s continued reliance on an invalid waiver does not provide a basis for deviating from the mandatory requirement to notify AFOSI as set forth in Air Force Instruction 44-102. Similarly, accreditation requirements (which permit disclosures

units including Reserve and Guard personnel during their active duty periods, civilian, contract, volunteer personnel and trainees. *Id.* at 1.

³⁵¹ Due to the update to the Instruction, this paragraph was changed from ¶ 1.52.1 to ¶ 2.36, but the content remained the same.

³⁵² USAFA Instruction 51-201, ¶ 2.8.1.3, Exhibit 55. The Instruction also states that “[t]he person the victim is confiding in should advise him or her that [the Counseling Center] is not required to place a report of the counseling session in the cadet’s permanent medical record.” *Id.* at ¶ 2.3.2.

³⁵³ Letter, Temporary Limited Waiver of Air Force Instruction 44-102, May 22, 1997, Exhibit 129.

³⁵⁴ *See generally* statement of Lt Gen Hosmer, Exhibit 45, at 17.

³⁵⁵ Letter, Temporary Limited Waiver of Air Force Instruction 44-102, May 22, 1997, Exhibit 129.

³⁵⁶ Air Force Instruction 33-360VI, Publications Management Program, Section 3G, ¶ 3.47. The Instruction provides for a waiver of a requirement in a higher headquarters’ publication if compliance with the requirement is “impractical due to unique local situations.” *Id.* A waiver remains in effect until the approving official cancels the waiver, in writing, or revises the publication. *Id.* When the approving official revises the publication, the requester must renew the waiver. *Id.*

³⁵⁷ *See* Air Force Instruction 44-102, November 17, 1999, which supersedes Air Force Instruction 44-102, July 1, 1998.

³⁵⁸ In addition, the notification requirement does not run afoul of the Air Force’s Psychotherapist-Patient Confidentiality set forth in Air Force Instruction 44-109, Mental Health, Confidentiality, and Military Law, that protects “[c]ommunications between a patient and a psychotherapist . . . for the purpose of facilitating diagnosis or treatment of a patient’s mental or emotional condition [unless] . . . [a] federal law, state law, or service regulation imposes a duty to report information contained in a communication.” Air Force Instruction 44-109, Mental Health, Confidentiality, and Military Law, ¶ 2 (March 1, 2000). In addition, there is no privilege when information is necessary to ensure the safety and security of military personnel, [or] military dependents. . . . *Id.* at ¶ 2.2.6. Information of a sexual offense is required to be reported by Air Force Instruction 44-102, and in certain instances when necessary to protect the security of other military personnel, therefore such information would not be privileged.

authorized by state law and federal guidelines and statutes) do not provide a basis for such deviation.³⁵⁹

(But see discussion, *infra*, regarding confidentiality for psychotherapists and application of Air Force Instruction 44-102 to the Cadet Counseling Center.)

5. Fear of reporting, the significance of confidentiality, and confidentiality in the Air Force.

Some sexual assault victims have expressed fears about what will happen if they report an assault.³⁶⁰ Other cadets, Air Officers Commanding, Military Training Leaders, chaplains, and former graduates echo these fears.³⁶¹ The fear exists on many levels: fear of being punished by command; fear of having their friends punished by command; fear of being harassed or ostracized by other cadets; fear of having to remain in contact with the perpetrator who may be in the same squadron; fear that they will not be believed or supported by peers, by organizations, or by command; and fear of the impact on their reputation or status at the Academy or on their Air Force career.³⁶²

³⁵⁹ Accreditation Standards for University and College Counseling Centers, at Section B, ¶ 4, Exhibit 130. Department of Defense Regulation (DoDR) 6025.18R, DoD Health Information Privacy Information, implementing The Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320a – 1320d-8 (1996), became effective on April 14, 2003. DoD 6025-18R, DoD Health Information, Privacy Regulation, Exhibit 131. This regulation requires that Military Treatment Facilities establish standard operating procedures for uses and disclosures of certain patient information to include psychotherapy notes. *Id.* at Chapter 5 (C5). While this will affect certain Air Force medical facilities, it does not appear to apply to the Cadet Counseling Center. Memorandum for Record, Associate General Counsel, Re: DoD Health Information Privacy Regulation, April 29, 2003, Exhibit 132, at 1.

³⁶⁰ Statement of Female Group Chaplain, Exhibit 32, at 2. *See also* footnotes, and accompanying text, below.

³⁶¹ *See* Statement of Female Military Training Leader, Exhibit 39, at 1, 3-4 (victims are fearful that they will receive “sex in the dorms” demerits); Statement of Male Squadron Air Officer Commanding, Exhibit 35, at 3 (cadets fear punishment if they report); Statement of Male Squadron Air Officer Commanding, Exhibit 36, at 3 (cadets who come forward suffer adverse affects after they report assaults); Statement of Female Group Chaplain, Exhibit 32, at 1-2; Statement of Male Military Training Leader, Exhibit 133, at 3; and Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 4. *See generally* Memorandum for Record, Female First-Class cadet, Exhibit 134, at 1; Statement of Female Faculty Member, Exhibit 26, at 2 (one victim wanted to leave the Academy following assault after she saw how another victim had been treated); and Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 135 (victim believed AFOSI did not believe incident took place). *See also* Statement of Victim Advocate Coordinator, Exhibit 50, at 113-114; Statement of Two First-Class Female Cadets, Exhibit 136, at 1 (victim states the interview felt more like an interrogation and agents did not even offer her tissues or a glass of water); and Memorandum for Record, Interview with Victim Support Group, Exhibit 137, at 2 (Cadet Clinic and Emergency Room are not helpful; emergency room won’t see a cadet victim if the cadet clinic is open and cadet clinic won’t see patients without an appointment). While these statements may accurately portray a victim’s perception, it is important to note that law enforcement agencies and prosecutors must, at times, press a victim for specific factual information to test the veracity of an allegation. In particular, questions relevant to determining a victim’s lack of consent and exploring any potential mistake of fact defense can be quite uncomfortable for a victim. Yet, such questioning is essential to the development of an accurate factual account, apprehending a perpetrator, and successful prosecution of the alleged offense. AFOSI Manual 71-122, ¶ 2.3.3.4 specifically instructs agents to re-interview a victim to clarify inconsistencies when information is developed during an investigation indicating some or all of the victim’s initial allegation may be inaccurate, misleading, or false.

³⁶² *See generally* Statement of female Military Training Leader, Exhibit 31, at 4 (cadets don’t want to hurt their buddies); Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 2 (Victims ask questions about whether they or their friends are going to take a hit. Victims are more worried about their friends than themselves.); Statement of Two First-Class Female Cadets, Exhibit 136, at 1 (victim knew if she went forward, her friends were going to be witnesses and might get in trouble for their condonation of other misconduct occurring); Statement of Female Chaplain, Exhibit 30, at 2-3. *See* Memorandum for Record, Interview with Third-Class cadet, Exhibit 57, at 1 (harassment victim believes if she had reported, the upperclassman harasser and his friends would have made her life worse during recognition); Statement of Female Military Training Leader, Exhibit 39, at 1; Memorandum for Record Interview with

The crime of sexual assault often causes the victim to feel powerless. Accordingly, a key aspect of the confidentiality provided in the Academy program was the goal of giving victims more control.³⁶³ One means of giving victims more control that is incorporated in the Academy program is letting the victim decide what information will be reported to command and investigative authorities.³⁶⁴

Individual comments from cadets in the Superintendent's January 2003 Sexual Assault Services Survey also reflect that confidentiality is important. Some of the comments included:

"I think confidentiality might be an issue with cadets using CASIE. While it may be in place and respected, I would probably use an outside, anonymous source far from the Academy."

"My only concern is that if I were sexually assaulted, I would need to go to an outside agency for help so that the information did not go on my career records and hurt me. I do not trust the 'confidentiality' claim of [AF]OSI or other investigative organizations."

"...I have heard...the [sexual assault] program is reliable and genuinely sincere in anonymity [sic] and helping the victim, which is always most important."

"CASIE is fine because it is anonymous and there is no pressure to turn a case over to officials. But to go through the trauma and isolation caused by making an official claim would not be worthwhile."

Victim Support Group, Exhibit 137, at 2 (victim support group members state that a victim who makes an accusation of sexual assault is ostracized); and Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 100, at 2 (Some victims fear others will blame them or treat them differently). *See* Memorandum for Record, Interview with Female Second-Class cadet, Exhibit 139. Memorandum for Record, Interview with Victim Support Group, Exhibit 137, at 1 (some cadet victims indicated that a "blame-the-victim" mentality is prevalent at the Academy); Statement of Female Chaplain, Exhibit 30, at 2 (other women in the squadron will not support a victim; they think "you are making us all look not the same"); Statement of Female Faculty Member, Exhibit 26, at 4 (upperclass women perpetuate the problem by telling victims they should "suck it up" and not complain); Memorandum for Record, Interview with Admissions Advisor/Academy Graduate, Exhibit 140, at 1-2; Memorandum for Record, Interview with Female First-Class cadet, Exhibit 134, at 1, and Memorandum for Record, Interview with Female First-Class cadet/HREOs, Exhibit 111 (stating that First-Class cadet females are supportive of Fourth-Class cadet females). *See generally* Statement of Female Faculty Member, Exhibit 26, at 3; Statement of Male Military Training Leader, Exhibit 133, at 2; Statement of Female Military Training Leader, Exhibit 31, at 6 (leadership questions victim's honesty); Statement of Male First-Class cadet/CASIE, Exhibit 135, at 1 (when they get the AFOSI report, leadership shows concern for the cadet rule violations more than for the assault); and Statement of Male Squadron Air Officer Commanding, Exhibit 36, at 3; Statement of Female Military Training Leader, Exhibit 31, at 6 (lower-classmen would be afraid of being thought of as a snitch or someone who is a "kiss-ass" if they were to report a problem); Memorandum for Record, Interview with Female Second-Class cadet, Exhibit 138, at 1 (if you say anything, your reputation is ruined); Statement of Male First-Class cadet CASIE/Volunteer, Exhibit 101, at 4 (victims are worried about the consequences of reporting and might ask about impact on obtaining security clearances); and Memorandum for Record, Interview with Female Former Academy Cadet, Exhibit 141, at 3.

³⁶³ Statement of Male First-Class cadet/CASIE Volunteer, Exhibit 101, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 11, 127.

³⁶⁴ *See generally* statement of Lt Gen Hosmer, Exhibit 45, at 29. One study asserts, "Any policy or procedure that compromises, or worse, eliminates the student victim's ability to make her or his own informed choices about proceeding through the reporting and adjudication process—such as mandatory reporting requirements that do not include an anonymous reporting option or require the victim to participate in the adjudication process if the report is filed—not only reduces reporting rates but may be counter productive to the victim's healing process." Karjane, Fisher and Cullen, "Campus Sexual Assault: How America's Institutions of Higher Education Respond," Exhibit 142, at Issue VI: ¶ 5.

“...I would be anxious in revealing the information if I were assaulted due to the lack of confidentiality I feel there is as well as how others would perceive the situation and how their negative opinions would reflect in [sic] my reputation.”³⁶⁵

The essential challenge, then, is to balance the benefits of providing confidentiality for victims against command’s interest in knowing of crimes (including the identities of victims and alleged assailants), and having full opportunity to respond to them. Under the *Agenda for Change*, as in the rest of the Air Force, certain provisions for confidentiality must be taken into account, and provide limited confidentiality to cadet victims, as they do for other Air Force members.

Although there is currently no doctor-patient privilege for military members, Air Force Instruction 44-109, *Mental Health, Confidentiality, and Military Law*, states that conversations between a patient and a psychotherapist for the purpose of diagnosis or treatment of the patient’s mental or emotional condition are considered confidential communications, but will be disclosed to persons or agencies (1) with a proper and legitimate need for the information and (2) who are authorized by law or regulation to receive it.³⁶⁶ As discussed above, Air Force Instruction 44-102 provides such authority by requiring all personnel assigned to or working in an Air Force medical treatment facility to report incidents involving aggravated assault, rape, other sex offenses, and certain other crimes. This provision clearly applies to at least all Academy medical facilities, and although not literally applicable to the Cadet Counseling Center, it appears to have been interpreted in the past by the Air Force Surgeon General, who is responsible for Air Force Instruction 44-102, as applying also to the Cadet Counseling Center.³⁶⁷

Alternatively, the *Agenda for Change* provides an exception for reports of crimes of sexual assault, although clarification of Air Force Instruction 44-102 to that effect would be desirable. Air Force Instruction 44-109 also incorporates a limited psychotherapist-patient privilege for matters under the Uniform Code of Military Justice (UCMJ).³⁶⁸ Under Military Rule of Evidence 513, which was enacted in 1999, a patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist (or assistant) for the purpose of diagnosis or treatment of the patient’s mental or

³⁶⁵ Cadet Written Comments to Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 1, 11, 21, 25, 45.

³⁶⁶ Air Force Instruction 44-109, ¶ 2.1. A “psychotherapist” is defined as a psychiatrist, clinical psychologist, or clinical social worker or other privileged provider who is licensed in any state, territory, possession, the District of Columbia, or Puerto Rico to perform services as such, or who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such license or credentials. Air Force Instruction 44-109, Attachment 1.

³⁶⁷ Air Force Instruction 44-102, ¶ 2.36. The other incidents that are required to be reported are suspected child abuse, spousal abuse, homicides, suicides, attempted suicide, robbery, intentional prescription overdose, and narcotics overdose. *Id.* at ¶ 2.36. Literally, this requirement does not apply to the Academy’s Cadet Counseling Center since the Center is not aligned under the Medical Group and is arguably not a medical treatment facility. *See id.* at preamble, which states that the Instruction applies only to personnel assigned to or working in Air Force Medical Treatment Facilities. However, the Academy has operated the Cadet Counseling Center as if it were subject to the Instruction and, in fact, the Cadet Counseling center provides treatment similar to that provided by Family Advocacy offices which are aligned within a Medical Group and are considered part of the medical treatment facility. *See* Temporary Limited Waiver of Air Force Instruction 44-102, May 22, 1997 (indicating regard as a medical treatment facility); USAFA Instruction 51-201, ¶ 2.8.1.3, Exhibit 55 (stating that medical personnel at the Cadet Counseling Center are waived from complying with the reporting requirement in Air Force Instruction 44-102); Air Force Instruction 44-102 at preamble.

³⁶⁸ Air Force Instruction 44-109, ¶ 2.2. *See* U.S. v. Rodriguez, 54 M.J. 156 (2000) and MCM, MIL. R. EVID. 513 (2002).

emotional condition, in cases arising under the UCMJ,³⁶⁹ unless an exception applies.³⁷⁰ One exception is when service regulation imposes a duty to report. Another permits release of information when necessary to ensure the safety and security of military personnel, military property, classified information or the accomplishment of the mission.³⁷¹ The net effect of these exceptions is that, although reports of crimes of sexual assault would not themselves be privileged, other communications falling within the psychotherapist privilege may remain so.

In addition to Military Rule of Evidence 513, there is also a limited privilege in the Air Force that protects information revealed in a clinical relationship with a mental health provider if the member has been notified that he or she is under investigation or is suspected of the commission of an offense and poses a risk of suicide. This is known as the Limited Privilege Suicide Prevention Program. In those instances, the communications made between the patient and the provider while the patient was considered a suicide risk cannot be used in an existing or future UCMJ action or when determining what type of discharge should be given in a discharge action.³⁷² However, the information can be used for other non-UCMJ and non-duty characterization purposes. Thus, command could potentially still obtain the information, but would be limited in its use.

6. AFOSI authority to investigate.

Regardless of the Academy's confidentiality provisions, and the waiver issue discussed above, AFOSI retained authority to initiate investigations at its discretion. Department of Defense Instruction 5505.3, dated July 11, 1986, notes that "commanders of the military investigative organizations and their subordinate commanders shall be authorized to initiate criminal investigations [and] . . . shall not be required to solicit, nor shall they solicit from commanders outside the military criminal investigative organizations requests or authorizations to initiate investigations."³⁷³ As a practical matter, however, the Academy process restricted the information flow to the AFOSI to make such determinations. However, it appears that the Commander, AFOSI, after consideration of the Academy's position in 2000, concurred in the process set forth in USAFA Instruction 51-201.³⁷⁴

E. Amnesty for Infractions

The Academy has applied an amnesty policy aimed at encouraging victims to report allegations of sexual assault. The policy recognizes that some cadet victims are unlikely to report offenses, particularly if the victim was engaged in some misconduct when the sexual assault took

³⁶⁹ Communications are deemed "confidential" if they are not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of rendition of professional services. MCM, MIL. R. EVID. 513(b)(4) (2002). A "psychotherapist" is defined as a psychiatrist, clinical psychologist, or clinical social worker who is licensed in any state, territory, possession, the District of Columbia, or Puerto Rico to perform services as such, or who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such license or credentials. MCM, MIL. R. EVID. 513 (b) (2) (2002). Whether communications between a patient and a victim advocate or other Counseling Center staff would fall within this exception depends on whether the communication was for the purpose of diagnosis or treatment.

³⁷⁰ MCM, MIL. R. EVID. 513(c) (2002).

³⁷¹ MCM, MIL. R. EVID. 513(c)(6) (2002).

³⁷² Air Force Instruction 44-109, ¶ 3.5.

³⁷³ DoD Instruction 5505.3, Initiation of Investigations by Military Criminal Investigative Organizations (1986), ¶ 4.1, Exhibit 144. On June 21, 2002, this Instruction was reissued. The substance of ¶ 4.1. is now found at ¶ 6.1, Exhibit 145.

³⁷⁴ E-mail from Brig Gen Taylor, May 4, 2001, Exhibit 95.

place. Under the amnesty policy, in effect with the 1993 program, a cadet victim could be excused for infractions committed at the time of the alleged assault; however, the rules and their application were not well defined or understood.

1. Rules on Amnesty.

Amnesty was an aspect of the informal program initiated by Lt Gen Bradley C. Hosmer in the program he developed in 1993.³⁷⁵ In 1997, the concept of amnesty was formalized in USAFA Instruction 51-201.³⁷⁶ The policy was initiated “to encourage cadets to report sexual assaults and to ensure they receive available medical and counseling services.” Amnesty has been provided because sexual assaults often occur in conjunction with rules violations.³⁷⁷

The amnesty policy states that cadet victims will “generally not be disciplined” for self-identified violations of cadet instructions (such as pass violations, unauthorized alcohol consumption, or cadet fraternization) that may have occurred in connection with an assault. The policy is intended to be discretionary with command. AOCs are permitted to counsel cadets about such violations; however, the decision to sanction others who participated in related offenses is made on a case-by-case basis.³⁷⁸ This policy has recently been a major point of contention and may be a factor in a cadet’s decision to report sexual assault.

There is no exact data on how many victims have been provided amnesty since the implementation of the policy. The Victim Advocate Coordinator, who participated in the development and implementation of the policy, stated that since 1997 she has only been involved in two cases of requested amnesty.³⁷⁹

In March 2003, there were two changes to the policy.³⁸⁰ The first change provided that no action will be taken under the cadet disciplinary system for cadets who allege they are victims of sexual assault until the allegations are thoroughly investigated by the appropriate agencies. The second change addressed amnesty in sexual assault cases that involve illegal consumption of alcohol, and stated that underage consumption and possession of alcohol is a crime and the sanctions for underage consumption of alcohol by any Academy cadet may result in disenrollment.³⁸¹ The amendments clarify the Commandant is responsible for making the amnesty

³⁷⁵ Statement of Lt Gen Hosmer, Exhibit 45, at 23-25.

³⁷⁶ USAFA Instruction 51-201, ¶ 2.8.3, Exhibit 55.

³⁷⁷ See Statement of Lt Gen Hosmer, Exhibit 45, at 23 (indicated typical case at that time might include drinking after hours in the dormitory, fraternization); Statement of Director of Admissions (Vice Commandant 1999 to 2000), Exhibit 66, at 18 (described incident involving underage drinking and alleged sexual assault); Statement of Lt Gen Dallager, Exhibit 71, at 68-69 (stated that typically alcohol is involved); Statement of Victim Advocate Coordinator, Exhibit 50, at 102, 119 (alcohol involved in 80% of sexual assaults, which also involved fraternization and “Over the Fence”). See generally Statement of Former Vice Commandant, Exhibit 59, at 73-83.

³⁷⁸ USAFA Instruction 51-201, ¶ 2.8.3, Exhibit 55.

³⁷⁹ See Statement of Victim Advocate Coordinator, Exhibit 50, at 114.

³⁸⁰ See 34th Training Group Cadet Information File 03-10, Policy on Cadet Disciplinary Action Involving Sexual Assault, Sexual Harassment, or Rape, March 1, 2003 [hereinafter CIF 03-10] and 34th Training Group Cadet Information File 03-11, 34th Training Wing Policy On Alcohol, March 11, 2003 [hereinafter CIF 03-11], Exhibit 146.

³⁸¹ CIF 03-11, Exhibit 146. Prior to this CIF, underage drinking and possession of alcohol were often handled through the cadet disciplinary system, rather than through the UCMJ. See Trend Analysis of Discipline Data, March 26, 2003, Exhibit 147.

decision, a fact that is not stated in USAFA Instruction 51-201.³⁸² The amendments also present a timeline for when amnesty decisions will be made.

The *Agenda for Change* in March 2003 provided for additional and more sweeping changes: “In all reported cases of sexual assault, amnesty from Academy discipline arising in connection with the alleged offense will be extended to all cadets involved with the exception of the alleged assailant, any cadet involved in covering up the incident, and the senior ranking cadet in attendance. The senior ranking cadet present will be responsible and accountable for all infractions committed by junior cadets.”³⁸³

2. Misunderstanding of the Amnesty Policy.

The Working Group found many individuals at the Academy do not understand the amnesty policy. Cadets, CASIE representatives, AOCs, and faculty members explained their understanding of the amnesty policy, revealing that there are various views including:³⁸⁴ amnesty is provided for all cadet infractions related to a sexual assault;³⁸⁵ amnesty is only given in limited circumstances;³⁸⁶ amnesty is misused by some women who have broken a lot of rules, claiming they are assaulted when they really weren’t so they can avail themselves of the amnesty policy;³⁸⁷ and amnesty is rarely or never used.³⁸⁸

³⁸² See CIF 03-10 and CIF 03-11, Exhibit 146; USAFA Instruction 51-201, ¶ 2.8.3., Exhibit 55.

³⁸³ See *Agenda for Change*, Exhibit 4.

³⁸⁴ Statement of Female Second-Class cadet, Exhibit 109, at 3 (stating that to claim amnesty one must send a formal form requesting amnesty to the Commandant for approval. One can request amnesty for oneself or anyone else that was involved in the incident and that most of the time amnesty is granted.); Statement of Squadron Air Officer Commanding (AOC), Exhibit 34, at 8 (stating that he thinks that the Training Wing Commander grants amnesty); statement of Squadron AOC, Exhibit 127 (stating that before this controversy started he thought amnesty was that for anything a cadet did wrong, that cadet could not get in trouble if the cadet came forward. But also stating now he is not sure what it means); Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 148, at 2 (stating she does not understand the amnesty portion of the counseling program. Although amnesty “may” be given, in her experience, it really isn’t available. She believes amnesty only applies if the allegations are substantiated.); Statement of Male First-Class cadet, Exhibit 149, at 2 (stating that his understanding of the amnesty policy was if a female cadet and a male cadet were drinking when a sexual assault occurred, both cadets would receive a “hit” for drinking. His understanding of the new policy is that the female will no longer receive the “hit.”); Statement of Group AOC, Exhibit 150, at 4 (he really doesn’t know how the amnesty program works); Statement of Female First-Class cadet, Exhibit 151, at 2 (amnesty can be obtained if one goes to CASIE then it is set up to let the cadet report and not get in trouble for drinking or fraternizing); Statement of Male Fourth-Class cadet, Exhibit 38, at 3 (he thought he earlier understood the policy, but now didn’t know exactly what amnesty was since the media coverage and everyone talking about it); Statement of Two First-Class Female Cadets, Exhibit 136, at 2 (they thought amnesty’s primary objective is to put rapists behind bars, but they didn’t know how it’s being used in the cadet system). See Memorandum for Record, Interview with Cadet Wing Leadership, February 26, 2003, Exhibit 25; Memorandum for Record Group Interview with CASIE Reps, February 25, 2003, Exhibit 152; Memorandum for Record, Group Interview with Female Cadets, February 25, 2003, Exhibit 56; Memorandum for Record, Group Interview with Squadron AOCs, February 25, 2003, Exhibit 153; Memorandum for Record, Interview with Counseling Center Personnel, February 21, 2003, Exhibit 154; Memorandum for Record, Interview with Major, February 24, 2003, Exhibit 155.

³⁸⁵ Statement of Female MTL, Exhibit 39, at 4; Statement of Squadron AOC, Exhibit 127, at 5.

³⁸⁶ Statement of Female First-Class cadet/CASIE Volunteer, Exhibit 19, at 2; Statement of Male First-Class cadet, Exhibit 100, at 2; Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 148; Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37, at 1; Statement of Female First-Class cadet, Exhibit 151, at 2; Statement of Squadron Air Officer Commanding, Exhibit 36, at 5; see Memorandum for Record, Group Interview with Squadron AOCs, February 25, 2003, Exhibit 153.

³⁸⁷ Statement of Group Air Officer Commanding, Exhibit 150, at 4; Statement of Chief of Military Justice, Academy Legal Office, Exhibit 91, at 6; Statement of Female Second-Class cadet, Exhibit 139; Statement of Area Defense

Leadership also had varying views over time of what the policy means and how it should be applied. One Commandant stated he was not involved in amnesty decisions and was not aware of anyone being involved in making amnesty decisions. He also stated that if his Vice Commandant had been involved in making amnesty decisions that would have “astound[ed]” him.³⁸⁹ The current Commandant and Superintendent viewed the amnesty decision as that of the Vice Commandant, who is the person who sees the reports from CASIE.³⁹⁰ They view the authority of amnesty as derived from the USAFA Instruction 51-201 and as a delegated authority by tradition and custom.³⁹¹ The Vice Commandant considers the grant of amnesty to be a matter of judgment on a case-by-case basis³⁹² and the amount of amnesty given can in some cases be fairly liberal, while more limited in other cases.³⁹³ Even the Superintendent thought the amnesty policy was not very clear and thought the policy should be available for the alleged victim, as well as others participating or part of the incident.³⁹⁴

Interviews indicate that some victims who report a sexual assault to CASIE are made aware of the amnesty provision by the CASIE volunteer.³⁹⁵ The CASIE volunteer will even apply for amnesty on behalf of the victim.³⁹⁶ However, some CASIE volunteers who are not clear themselves on how the provisions work are providing amnesty information to victims.³⁹⁷

Counsel, Exhibit 156, at 2; *See also* Memorandum for Record, Group Interview with Cadet Wing Leaders, February 26, 2003, Exhibit 25; Memorandum for Record, Interview with Brig Gen Gilbert, Exhibit 157.

³⁸⁸ Statement of Female Military Training Leader, Exhibit 39, at 4; Memorandum for Record, Interview with Physics Department Instructor, Exhibit 158. *See* Statement of Male First-Class cadet, Exhibit 135, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 113; Memorandum for Record, Interview with Squadron Air Officer Commanding, Exhibit 159.

³⁸⁹ Statement of Brig Gen Welsh, Exhibit 64, at 46-47.

³⁹⁰ Statement of Lt Gen Dallager, Exhibit 71, at 67, 69; Statement of Brig Gen Gilbert, Exhibit 10, at 50-53 (Brig Gen Gilbert explained that the general perception is that the Commandant is in charge of the disciplinary system. But the Vice-Commandant, by design, was put into the situation to grant amnesty because the Vice Commandant would have both insight into what was happening on the discipline side and insight as to what was happening on the CASIE side. Brig Gen Gilbert expressed dissatisfaction with the reporting process that does not allow him to see all the information on a sexual assault report made through CASIE or the Counseling Center.

³⁹¹ Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 39-40. *See also* statement of Brig Gen Gilbert, Exhibit 10, at 50-51.

³⁹² *See* Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 42.

³⁹³ Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 40; Statement of Brig Gen Gilbert, Exhibit 10, at 56, 78.

³⁹⁴ Statement of Lt Gen Dallager, Exhibit 71, at 70.

³⁹⁵ Statement of Male First-Class cadet, Exhibit 101, at 2. *See also* Statement of Male First-Class cadet, Exhibit 135, at 1; Statement of Male First-Class cadet, Exhibit 100.

³⁹⁶ *See* Memorandum for Record, Interview with Male Third-Class cadet/CASIE Volunteer, Exhibit 160 (a CASIE representative can request amnesty on behalf of the victim for infractions of regulations and that the CASIE representative sends the request through the chain of command at the training wing and the Superintendent will either grant or deny the amnesty request). *See also* Statement of Victim Advocate Coordinator, Exhibit 50, at 114.

³⁹⁷ Statement of Male First-Class cadet, Exhibit 100, at 2 (he knows one must request amnesty before an investigation is opened in order to receive it but acknowledges he doesn't know the process). *See* Statement of Female Second-Class cadet, Exhibit 109, at 3. (cadets requesting amnesty send up a form to the Commandant or other person in the chain of command for approval.) *See generally* Statement of Victim Advocate Coordinator, Exhibit 50, at 116-17; Memorandum for Record, Group Interview with CASIE Reps, February 2, 2003, Exhibit 152.

There is confusion as to whether amnesty must be formally requested. There are various reported interpretations of whether a victim must apply for amnesty,³⁹⁸ and the Academy Instruction does not address this issue.³⁹⁹

The Victim Advocate Coordinator described her knowledge of the amnesty policy, which further highlighted the confusion about the policy. She stated, “although I’ve been told by [the Academy Legal Office] that the victim should never have to apply for amnesty, that it should be almost a given, but...I didn’t understand it that way.”⁴⁰⁰

The senior leadership of the Academy does not have a consistent understanding of whether amnesty must be requested. The Vice Commandant, Col Eskridge,⁴⁰¹ stated that he does not think a victim should have to apply for amnesty and he gave a recent example of an offer of amnesty, through the Cadet Counseling Center, to an unidentified victim to help her come forward. She did not have to ask for amnesty and she was told that the Vice Commandant would offer amnesty.⁴⁰² However, the Training Group Commander’s understanding was that amnesty has to be requested by the victim in written form.⁴⁰³ Likewise, the Commandant thought amnesty must be applied for and approved,⁴⁰⁴ and that if a victim applied for amnesty, the Vice Commandant was authorized to grant it.⁴⁰⁵

3. Decisions Not To Grant Amnesty

The Air Force Inspector General is currently reviewing an assault case where it has been alleged that cadets were disciplined for rules infractions after reporting a sexual assault where those infractions were related to the circumstances surrounding the assault. However, Academy officials provided explanations for some amnesty denial decisions that allowed for discipline of individuals who reported sexual assaults. For example, in one case the Vice Commandant denied amnesty to a victim for misconduct that had been on-going for an entire academic year (for months, the victim had been leaving her own room after Taps to sleep in her boyfriend’s room).⁴⁰⁶ In that case, the victim was given punishment for other infractions leading up to the crime. However, the Vice Commandant perceived that the victim was under the impression that because she had a CASIE umbrella around her she was invulnerable.⁴⁰⁷ In another example, the Chief of Military Justice described a case where the alleged victim was brought up on an Honor Code violation where the victim had apparently lied about being assaulted when the behavior was consensual.⁴⁰⁸ In a third

³⁹⁸ Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37, at 1 (she just learned recently that one has to ask for amnesty in order to get it); Statement of Female Second-Class cadet, Exhibit 109, at 3 (the cadets send up a formal form requesting amnesty to the Commandant for approval). See Memorandum for Record, Group Interview with Male Cadets, February 27, 2003, Exhibit 161; Meeting with Brig Gen Gilbert, February 27, 2003, Exhibit 157; See Memorandum for Record, Group Interview with Female Cadets, February 25, 2003, Exhibit 56; Statement of Academy Staff Judge Advocate, Exhibit 162, at 10.

³⁹⁹ See USAFA Instruction 51-201, ¶ 2.8.3, Exhibit 55.

⁴⁰⁰ See Statement of Victim Advocate Coordinator, Exhibit 50, at 114.

⁴⁰¹ Colonel Eskridge was Vice Commandant from December 2002 until March 2003.

⁴⁰² Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 41.

⁴⁰³ Statement of Col Slavec, Exhibit 23, at 57-58.

⁴⁰⁴ See Memorandum for Record, Interview with Brig Gen Gilbert, February 27, 2003, Exhibit 157.

⁴⁰⁵ Statement of Brig Gen Gilbert, Exhibit 10, at 50-51.

⁴⁰⁶ See Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 37-41.

⁴⁰⁷ *Id.*

⁴⁰⁸ Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91, at 6 (This cadet resigned in lieu of possible disenrollment).

case, the victim had been involved in underage drinking, fraternization and sex in the dorms and was punished for an event unrelated to the sexual assault.⁴⁰⁹ Finally, the Vice Commandant denied amnesty in one case because he had already been made aware of a party the victim attended and other things that happened that night.⁴¹⁰ He found out through official channels that the victim was involved in this party before she went to the Cadet Counseling Center to report an alleged assault.⁴¹¹

4. Concerns of Collateral Participants Being Punished.

The Academy Instruction and recent Academy changes to the amnesty policy have not been clear as to the status of collateral participants.⁴¹² The recent changes provide that “no action will be taken under the cadet disciplinary system against cadets involved in the situation until the investigations are complete.”⁴¹³ The *Agenda for Change* addresses this issue and provides that amnesty will be extended to all cadets involved with the exception of the alleged assailant, any cadet involved in covering up the incident, and the senior ranking cadet in attendance. The senior ranking cadet present will be responsible and accountable for all infractions committed by junior cadets.”⁴¹⁴

5. Needed Clarifications.

As currently written, even after taking into account the *Agenda for Change*, the amnesty policy still leaves issues that will need to be addressed, and clarified in advance with cadets, to avoid misunderstandings in the future:

- Will amnesty apply to cadet infractions factually related to the sexual assault but not part of the specific incident of assault (such as a pattern of cadet fraternization by the victim that will be disclosed if an assault is reported)? (It would appear not.)
- Will amnesty apply to matters beyond mere cadet infractions, and if so, how? (e.g., underage drinking has been associated with sexual assault and can be considered both a cadet infraction, and a crime; if underage drinking and similar matters that can qualify as crimes are to be included within the amnesty process, UCMJ immunity procedures may be needed.)
- Short of discipline, what command responses to correct victim misconduct are permissible even though amnesty applies (e.g., counseling)?
- Can victim misconduct be considered for potentially adverse purposes other than discipline (e.g., suitability for commissioning)?

⁴⁰⁹ See AFOSI Report of Investigation, May 1, 2001, Exhibit 163; Letter to Deputy Chief, Congressional Inquiry Division, Office of Legislative Liaison, August 17, 2002, Exhibit 164.

⁴¹⁰ Statement of Vice Commandant (December 2002 to March 2003), Exhibit 124, at 37-38.

⁴¹¹ Statement of Brig Gen Gilbert, Exhibit 10, at 78-79 (He thought taking into consideration whether the cadet reported the crime, whether the incident was previously reported through the disciplinary system and whether it was limited to a single incident. He stated that in this case the Form 10s had already been issued before she went to CASIE to request amnesty and they were not the result of a single incident).

⁴¹² USAFA Instruction 51-201, ¶ 2.8.3, Exhibit 55; and CIF 03-10 and CIF 03-11, Exhibit 146.

⁴¹³ CIF 03-10 and CIF 03-11, Exhibit 146.

⁴¹⁴ See *Agenda for Change*, Exhibit 4.

F. The Victim and Witness Assistance Program

1. The Air Force Victim and Witness Assistance Program

The Air Force has a Victim and Witness Assistance Program (VWAP), outlined in Air Force Instruction 51-201, that applies to the Air Force Academy.⁴¹⁵ The program requires that certain services, information, and considerations be given to any victim of an offense punishable under the Uniform Code of Military Justice (UCMJ) committed by a person subject to the UCMJ.⁴¹⁶ Because sexual assaults committed by cadets are punishable under the UCMJ, victims of these assaults are entitled to the services, information, and considerations the VWAP provides.⁴¹⁷ The purpose of the program is to provide significant support to victims to help them deal with the aftermath of the offense and to foster their cooperation in the military justice process.⁴¹⁸ The program is also designed to ensure that victims are afforded specific, congressionally mandated rights and considerations in the investigative and legal processes.⁴¹⁹

The Academy is required to implement the Air Force VWAP, and in 1997, the Academy created its own supplement to the Air Force VWAP in USAFA Instruction 51-201, *Cadet Victim/Witness Assistance and Notification Procedures*.⁴²⁰ By regulation, this supplement to an existing Air Force Instruction is permitted, but the supplement is subordinate to the Air Force Instruction and the Academy is required to comply with both.⁴²¹

The language of the Academy Instruction mirrors some of the language of the Air Force Instruction, but focuses primarily on support to sexual assault victims. The Instruction memorializes a “support first” approach to providing victim support and concentrates on the confidential reporting process and the provision of the victim advocate, counseling, and medical support services.⁴²²

⁴¹⁵ See Air Force Instruction 51-201, Administration of Military Justice, Chapter 7 (November 2, 1999) [hereinafter Air Force Instruction 51-201]. The program was first prescribed in Air Force Instruction 51-201 in July 1994, implementing the Victim and Witness Protection Act of 1982 (42 U.S.C. §§ 10601-10605), the Victims’ Rights and Restitution Act of 1990 (42 U.S.C. §§ 10606, 10607), DoD Directive 1030.1, Victim and Witness Assistance, and DoD Instruction 1030.2, Victim and Witness Assistance Procedures.

⁴¹⁶ Air Force Instruction 51-201, ¶¶ 7.1.1, 7.3 and 7.5.

⁴¹⁷ Note that Article 2 of the UCMJ makes cadets subject to the Code. While recognizing the problems with the Academy’s definition, sexual assault could be considered an offense when any of the following crimes are alleged: Article 120, Rape and Carnal Knowledge; Article 125, Sodomy by Force and without Consent; Article 134, Indecent Assault; Article 134, Assault with Intent to Commit Rape or Sodomy; Article 134, Indecent Acts or Liberties with a Child, among others.

⁴¹⁸ Air Force Instruction 51-201, ¶ 7.2.

⁴¹⁹ Air Force Instruction 51-201, Sections 7C and 7D.

⁴²⁰ See USAFA Instruction 51-201 (July 15, 1997) Exhibit 86.

⁴²¹ Air Force Instruction 33-360, Volume 1, Publications Management, ¶ 2.2.4, 2.2.7, 3.5 (May 6, 2002) and Air Force Policy Directive 90-1, Policy Formulation, ¶¶ 2 and 4 (Sept. 1, 1998).

⁴²² A point paper written in 1997 by the Academy (when the USAFA Instruction 51-201 was implemented) articulates the objectives of the Academy’s sexual assault victim and witness assistance program. These objectives are not reflected in the Instruction, but are instructive as to the original objectives of the program. The Point Paper lists the objectives as: 1) Provide confidentiality and greater decision-making ability to the victim; 2) Promote early entry into support structures (medical, counseling and the like); and 3) Encourage earlier and more likely reporting of the assault to investigative authorities. Point Paper, Victim and Witness Assistance Program, Sept. 17, 1997, Exhibit 165. These objectives differ from, but are not inconsistent with, the objective of the Air Force VWAP which are to: 1) Mitigate the physical, psychological, and financial hardships suffered by victims and witnesses of offenses; 2) Foster cooperation of

The overall responsibility for the Air Force VWAP rests with the Local Responsible Official (LRO). Under the Air Force Instruction, the LRO is the installation commander unless the installation commander delegates the responsibility to the Staff Judge Advocate (SJA), which is the case at the Academy.⁴²³ This overall responsibility includes ensuring victims are identified, required services and considerations are provided, and training is accomplished.⁴²⁴ Under the USAFA Instruction, the Cadet Counseling Center is referred to as the agency primarily responsible for administering the VWAP, but there is no indication that the installation commander has delegated the LRO responsibility to the Cadet Counseling Center, nor would such a delegation be in accordance with the Air Force Instruction.⁴²⁵

Interviews and other information indicate there has been no active oversight of the Air Force VWAP by 10th Air Base Wing SJA, although the current SJA began making efforts to take a more active oversight role after she arrived in the summer of 2002.⁴²⁶ This lack of oversight resulted in some ineffectiveness of the Air Force VWAP as applied by the 10th Air Base Wing.⁴²⁷ Moreover, as discussed below, it appears that instead of following the Air Force VWAP Instruction, the Academy was following only the Academy supplement.

2. The Role of the Air Force Victim Liaison and the Academy's Victim Advocate

A key feature of the Air Force VWAP includes the designation of a victim liaison to assist the victim. This person is appointed as a sort of ombudsman to ensure that the victim understands the investigative and military justice process and is aware of the rights he or she has been afforded under federal law.⁴²⁸ In addition, the victim liaison and other victim support service providers work together to ensure that the victim receives necessary and beneficial services such as medical care, counseling, protection from the alleged perpetrator or others associated with the alleged perpetrator,

victims and witnesses within the military justice system; and 3) Ensure best efforts are made to accord to victim of crime certain enumerated rights. Air Force Instruction 51-201, ¶ 7.2.

⁴²³ Air Force Instruction 51-201, ¶ 7.7. This delegation was made by the Air Base Wing Commander to the Air Base Wing Staff Judge Advocate on May 23, 2001. Memorandum, Delegation of VWAP Responsibilities, Exhibit 166. There is no information regarding whether any delegation existed prior to this date.

⁴²⁴ Air Force Instruction 51-201, ¶ 7.7 and ¶ 7.16.1.

⁴²⁵ USAFA Instruction 51-201, ¶ 1.1.1 states: "While the Cadet Counseling [Center] retains much of the responsibility for the VWAP, it is to be a coordinated effort among all agencies providing services to cadets." Exhibit 55. See Air Force Instruction 51-201, ¶ 7.7.

⁴²⁶ Memorandum for Record, Interview with Former Deputy Staff Judge Advocate, 10th Air Base Wing, March 14, 2003, Exhibit 167; Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 2-3; see generally Statement of Former 10th Air Base Wing Staff Judge Advocate, Exhibit 168.

⁴²⁷ Memorandum for Record, Interview with Former Deputy Staff Judge Advocate, 10th Air Base Wing, March 14, 2003, Exhibit 167; Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 2-3. Note that the 10th Air Base Wing played no role in dealing with victims whose cases were only reported to CASIE or handled solely through the cadet disciplinary system. *Id.* at 2, 4. See also Memorandum for Record, Interview with Former Chief of Military Justice, 10th Air Base Wing, Exhibit 169, at 1 (indicating her efforts to revitalize the Air Force VWAP and the Academy).

⁴²⁸ Air Force Instruction 51-201, ¶ 7.8, Section 7D and Figure 7.1. At least one victim has complained that the Legal Office did not provide adequate information about the legal process while preparing for a hearing. Statement of Two First-Class Female Cadets, Exhibit 136, at 3. But see Memorandum from 10th Air Base Wing Chief of Military Justice to Academy Legal Office Staff Judge Advocate, February 4, 2003, Exhibit 170 (indicating at least three meetings with victim prior to Article 32 hearing).

and restitution (when appropriate and available).⁴²⁹ In the Air Force, this person is typically a judge advocate or paralegal.⁴³⁰

An important responsibility of the victim liaison and others under the Air Force VWP is ensuring victims are aware of their rights.⁴³¹ Under DoD Instruction 1030.2 and Air Force Instruction 51-201, victims have the right to: 1) be treated with fairness and respect for the victim's dignity and privacy; 2) reasonable protection from a suspect or others working in concert with the suspect; 3) notification of all court-martial proceedings; 4) be present at all public court-martial proceedings, unless a military judge determines the victim's testimony would be materially affected if the victim heard other testimony; 5) confer with trial counsel; 6) appropriate restitution, when available; and 7) information about an accused's conviction, sentencing, confinement and release.⁴³² Victim liaisons and others make victims aware of these rights by using a DD Form 2701, *Initial Information for Victims and Witnesses of Crime*.⁴³³ It does not appear that victims have been properly advised of these rights by CASIE representatives or the Academy's victim advocates.⁴³⁴ Unless sexual assault victims at the Academy have personal contact with the Legal Office, AFOSI, or Security Forces, the victims may not be fully aware of their rights.⁴³⁵ If not fully and carefully advised, a victim may be unaware of the support available in the event of intimidation by others, may miss an opportunity to receive restitution, and may generally be unaware of what they have a right to expect from the Academy.

The liaison serves another important function as the conduit for another key aspect of the VWP—involvement of the victim in the investigative and legal process. More than just serving as a witness to prove the offense, under the Air Force VWP, in addition to the rights listed above, victims are given the opportunity to provide input on decisions whether a case should be tried by court-martial or dismissed. Victims are also given the opportunity to provide their views on whether alleged offenders should be discharged in lieu of trial by court-martial or any plea negotiations.⁴³⁶ The victims' opinions are not binding on the decision-maker, but are carefully weighed in making the decision.⁴³⁷ Victims also have the right to confer with the trial counsel involved in the case;⁴³⁸ this helps the victim gain a better understanding of the process and can eliminate anxiety the victim may have about the process. Through significant victim participation and support, the victim can feel more fully involved and often more supported in the process.

⁴²⁹ *Id.* at ¶¶ 7.8, 7.10, 7.13, 7.15 and Figure 7.1.

⁴³⁰ Air Force Instruction 51-201, ¶ 7.8 states that a victim liaison may also be a medical or mental health care provider or "other person appropriate under the circumstances of a particular case."

⁴³¹ *Id.* at Figure 7.1. This task of ensuring victims are aware of their rights is the responsibility of the Legal Office, Security Forces, AFOSI, Medical Group and Family Support Center.

⁴³² *Id.* at ¶ 7.9.

⁴³³ See DD Form 2701; DoD Instruction 1030.2, ¶ 6.1.

⁴³⁴ Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171; Memorandum for Record, Interview with former CASIE Program Manager, Exhibit 172; see also CASIE Training Syllabus, Exhibit 173 (noting no reference to training on Air Force VWP or Victim's Rights). The DD Forms 2701 are not distributed by the Medical Group, though it is a responsibility designated to them under the Air Force Instruction. Memorandum for Record, Telephonic Interview with Physician, Cadet Clinic, Exhibit 174.

⁴³⁵ Statement of 10th Air Base Wing Paralegal, Exhibit 175, at 2; Statement of Former OSI Detachment Commander, Exhibit 176, at 5; Statement of Current AFOSI Detachment Commander, Exhibit 177, at 5; Statement of Commander, 10th Security Forces Squadron, Exhibit 178, at 5.

⁴³⁶ Air Force Instruction 51-201, ¶ 7.10.10.

⁴³⁷ *Id.* at ¶ 7.10.11.1.

⁴³⁸ *Id.* at ¶ 7.9.5.

Under the USAFA Instruction, CASIE representatives and the victim advocates provide services similar to a victim liaison with respect to identifying and securing medical and on-base counseling services, but appear to go well beyond in terms of the personal attention shown to the victim. However, the victim advocates do not perform all the other duties of a victim liaison required under the regulation.⁴³⁹ For example, a sexual assault victim at the Academy is not provided legal support services to learn about the investigative and legal process, unless the victim requests such services.⁴⁴⁰ Victims advised about the legal process by CASIE members, victim advocates, or others rather than legal officers or paralegals may receive inaccurate or incomplete information.⁴⁴¹ The victim advocates, while often an effective voice with command in securing needed emergency leave and temporary reprieves from discipline, do not appear to play a role in ensuring victims are involved in command's decisions regarding the case.⁴⁴²

Following only the USAFA Instruction, the victim advocates provide admirable personal services to victims in terms of helping them get medical attention and on-base counseling and in helping them to cope while enduring the rigors of Academy life. However, the failure to incorporate all aspects of the Air Force Victim and Witness Assistance Program can result in victims receiving less than they are due by regulation.

3. The Air Force Victim and Witness Assistance Council and the Academy's Sexual Assault Services Committee.

Another important feature of the Air Force VWAP is the Victim and Witness Assistance Council mandated by DoD Instruction.⁴⁴³ The purpose of this Council is to ensure an interdisciplinary approach among providers of victim support services. Under the DoD Instruction, the individuals who may be included on the Council are law enforcement personnel, criminal investigators, chaplains, family advocacy personnel, emergency room personnel, family service

⁴³⁹ See Statement of Victim Advocate Coordinator, Exhibit 50 at 42-43; Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171; Statement of Male First-Class cadet CASIE Representative, Exhibit 100, at 1; *see generally* Statement of CASIE Program Manager, Exhibit 99, at 4-5. Note that CASIE representatives and victim advocates do not usually provide information on off-base counseling options. This is an important option because cadets could perceive that a stigma may attach to them if they are seen going to counseling services on-base. Statement of Victim Advocate Coordinator, Exhibit 50 at 14; Statement of Flight Chief, Life Skills Center, Exhibit 179, at 18.

⁴⁴⁰ Statement of Male First-Class cadet CASIE Representative, Exhibit 100, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 30 and 86; Statement of Former 10th Air Base Wing Staff Judge Advocate, Exhibit 168, at 2. This position is consistent with the Academy's VWAP approach to allow the victim to determine how much and what kind of support is desired. Unfortunately, this may result in the victim missing out on accurate and helpful information.

⁴⁴¹ Statement of Brig Gen Gilbert, Exhibit 10, at 54; Memorandum for Record, Interview with CASIE Program Manager, Exhibit 172, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 30; Statement of Male First-Class cadet CASIE Representative, Exhibit 101, at 2; AFOSI Report of Investigation, E-mail from Male Third-Class cadet to Female Third-Class cadet Victim (Human Resources officer told him he violated the Uniform Code of Military Justice because he and victim did not have sex in the "missionary position"), Exhibit 180.

⁴⁴² Statement of Victim Advocate Coordinator, Exhibit 182, at 4-5, 27, and Statement of Victim Advocate Coordinator, Exhibit 50, at 116; *see also* Memorandum for Record, Interview with Former CASIE Program Manager, Exhibit 172 at 1 (indicating victim had to take initiative to talk with command about non-referral of charges); Statement of Former Chief, Sexual Assault Services, Exhibit 82, at 4. *But see* Memorandum for Record from Assistant Staff Judge, 10th Air Base Wing, to Staff Judge Advocate, Academy Legal Office, March 11, 2003, Exhibit 181 (indicating 10th Air Base Wing Victim Liaison sought victim input following Article 32 hearing).

⁴⁴³ DoD Instruction 1030.2, ¶ 5.2.6. This requirement does not appear in Air Force Instruction 51-201, but references to the DoD Instruction are found in the Air Force Instruction, and all new judge advocates receive training at The Judge Advocate General's School that covers this topic.

center personnel, equal opportunity personnel, judge advocates, unit commanding officers, and corrections personnel. Until recently there was no such Council active at the Academy.⁴⁴⁴

The Academy's Program as of 1995 included an interdisciplinary committee known as the Sexual Assault Services Committee.⁴⁴⁵ The primary purpose of the Sexual Assault Services Committee is to ensure "an interdisciplinary case management approach is taken by trained victim and witness service providers," consistent with DoD Instruction 1030.2, *Victim and Witness Assistance Procedures*. Despite the stated purpose, the Committee did not operate with a case management approach.⁴⁴⁶ Meeting minutes indicate that the Sexual Assault Services Committee tended to focus on education and training of CASIE representatives and the Cadet Wing rather than integrated delivery of services to victims.⁴⁴⁷ This outreach to the Cadet Wing to explain the Academy's approach to victim and witness assistance is not required by the Air Force VWAP. It undoubtedly provides valuable information to let the cadets know that support services are available. However, the Committee did not perform its primary duty of interdisciplinary case management.

According to the USAFA Instruction, the Sexual Assault Services Committee also serves an administrative function as the central resource for tracking and monitoring reported cases of sexual assault and rape.⁴⁴⁸ The Committee is required to provide biannual reports on sexual assault issues to the Superintendent and other Academy senior leaders.⁴⁴⁹

According to the USAFA Instruction, the Sexual Assault Services Committee includes representatives from all of the same groups required as participants under the DoD-mandated Victim and Witness Assistance Council, except Family Advocacy and Family Support Center personnel. In addition, from the USAFA Instruction, it appears that the Committee also has representatives from the Cadet Clinic, the Cadet Counseling Center, CASIE Hotline, Chaplain, the Preparatory School, and the Human Relations Division, as well as an Air Officer Commanding (AOC) and a Military Training Leader (MTL). In actuality, not all designated agencies have

⁴⁴⁴ See statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 2 and Statement of Former 10th Air Base Wing Staff Judge Advocate, Exhibit 168, at 2 (where the Council is omitted in the description of the Academy process). A Victim and Witness Assistance Council, organized by the 10th Air Base Wing Legal Office, met for the first time in November 2002 and again in January 2003. However, as of the January meeting, this Council did not include any representation from the Counseling Center, CASIE, or the Victim Advocate Program. The Victim Advocate Coordinator has reportedly been invited to attend the next meeting, which was not yet scheduled as of March 2003. Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 3; Statement of 10th Air Base Wing Paralegal, Exhibit 175, at 3; Memorandum from 10th Air Base Wing Commander to the 10th Air Base Wing Legal Office, (Sept. 13, 2002), Exhibit 183 (appointing members of the Victim and Witness Assistance Council). But see Memorandum for Record, Interview with Former Chief of Military Justice, 10th Air Base Wing, Exhibit 169, at 2 (indicating a Council that met a few times between June 1999 and Sept. 2001).

⁴⁴⁵ The Sexual Assault Services Committee was officially created in 1997 with the implementation of USAFA Instruction 51-201. However, the Vice Commandant from 1995 to 1998 said the Sexual Assault Services Committee started meeting in 1995, prior to the creation of USAFA Instruction 51-201. Statement of Vice Commandant (1995 to 1998), Exhibit 46 at 16-17. The initial USAFA Instruction 51-201 took effect on July 15, 1997, Exhibit 86. The current version is dated April 18, 2000, Exhibit 55.

⁴⁴⁶ Memorandum for Record, Group Interview of Current and Former Cadet Counseling Center Directors, February 22, 2003, Exhibit 44 (case-by-case integration with other agencies is not the purpose of SASC, the purpose is for administration).

⁴⁴⁷ See Sexual Assault Services Committee Meeting Minutes, Sept. 13, 2000 – January 31, 2003, Exhibit 70 through Exhibit 81. See also Memorandum for Record, Interview with Cadet Counseling Center Personnel, Exhibit 154.

⁴⁴⁸ USAFA Instruction 51-201, ¶¶ 2.4 and 2.11.1, Exhibit 55.

⁴⁴⁹ *Id.* The effectiveness of this aspect of the Sexual Assault Services Committee is discussed in this Report, Section VI., Leadership Issues Pertaining to Sexual Assault at the Academy.

representatives at the Committee meetings. According to meeting minutes, the membership of the Committee has varied and its numbers have decreased from twenty-eight members assigned and sixteen members present in September 2000, to thirteen members assigned and eight members present in January 2003.⁴⁵⁰

There appears to be a general lack of awareness of the Sexual Assault Services Committee among victim support service providers. The Commander and other senior members of the 10th Medical Group did not know who represented them on the Committee despite their organizations being designated as committee members.⁴⁵¹ The chaplain representative stated she had been contacted twice by someone on the Committee to verify that she was still the representative, but she was never invited to attend any meetings.⁴⁵² Further, it appears the Committee did not include a representative of the 10th Air Base Wing Legal Office, which provides victim support during court-martial.⁴⁵³

The Sexual Assault Services Committee is directed to meet as needed to review programs and services (including Cadets Advocating Sexual Integrity and Education and the Victim's Advocate Program).⁴⁵⁴ The Committee initially met every month, but the frequency of the meetings tapered off over the years.⁴⁵⁵ Recent Committee "Minutes of Meetings" show the Committee met on September 13, 2000, November 15, 2000, March 7, 2001, October 5, 2001, December 13, 2001, February 21, 2002, May 2, 2002 and January 31, 2003.⁴⁵⁶ There were only two meetings in 2002 and a gap of nearly nine months between meetings. The reasons given for the time between the May 2002 meeting and the January 2003 meeting were scheduling conflicts, turnover in personnel on the Committee and maternity leave by the primary organizer, the Chief of Sexual Assault Services.⁴⁵⁷ The infrequency of these meetings and inconsistent gathering of relevant service providers prevents effective service delivery because providers have little opportunity to cross feed, to improve their overall awareness of the program objectives and to improve their overall awareness of the available services.

The lack of an Air Force Victim and Witness Assistance Council and the ineffectiveness of the Sexual Assault Services Committee resulted in a lack of an interdisciplinary approach to delivery of service to victims of sexual assault at the Academy.

⁴⁵⁰ See Sexual Assault Services Committee Meeting Minutes for Sept. 13, 2000 and January 31, 2003, Exhibits 70 and 81. According to the first Sexual Assault Services Committee chairperson, the committee was much smaller initially and included representatives from the Center for Character Development, the Cadet Clinic, the 10th Medical Group, a chaplain, and cadets from CASIE. Additional members were added over time. Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 16-17.

⁴⁵¹ Statement of 10th Medical Group Command Members, Exhibit 184, at 2.

⁴⁵² Statement of Female Group Chaplain, Exhibit 32, at 2.

⁴⁵³ Sexual Assault Services Committee Member Handbook AY2000-2001 (excerpts), List of Sexual Assault Services Committee Members, Exhibit 185; Statement of VWAP Representative, 10th Air Base Wing, Exhibit 175, at 2; *But see* Memorandum for Record, Interview with Former Chief of Sexual Assault Services, Exhibit 82, at 3 (stating a representative from both legal offices was present during her tenure.)

⁴⁵⁴ USAFA Instruction 51-201, ¶ 2.4.

⁴⁵⁵ The Committee met every month during the tenure of the first chairperson (November 1995 to May 1998), although she thought meetings might have tapered off to twice a quarter towards the end of the period. Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 17.

⁴⁵⁶ See Sexual Assault Services Committee Meeting Minutes, Exhibits 70-81.

⁴⁵⁷ Statement of Vice Commandant (December 2002 to April 2003), Exhibit 124, at 23-24, and Statement of Victim Advocate Coordinator, Exhibit 182, at 30.

4. Air Force Victim and Witness Assistance Program Training

Under Air Force Instruction 51-201, each organization at the Academy with victim support responsibilities is also responsible for training its personnel on the Air Force Victim and Witness Assistance Program (VWAP). The Local Responsible Office (LRO, at the Academy, the Staff Judge Advocate for the 10th Air Base Wing) is responsible for ensuring that all required training has been conducted by base agencies involved in delivering services to victims.⁴⁵⁸ The agencies, such as Security Forces, OSI, Family Support, Medical Group, and Chaplains, have varying responsibilities with regard to delivery of services, but through this training, all should be made aware of the responsibilities of and services available to victims through support agencies on and off-base.⁴⁵⁹

The 10th Air Base Wing Legal Office has not formally trained its own personnel in the VWAP and has only recently conducted training on the Air Force VWAP for other service providers, such as Security Forces and AFOSI.⁴⁶⁰ It appears that this training did not include any chaplains currently serving cadets,⁴⁶¹ CASIE representatives, victim advocates or any members of the Cadet Counseling Center staff.⁴⁶² As a consequence, the service providers have little understanding of what the Air Force VWAP program requires and what inadequacies exist by following only the Academy program.

Although the two victim advocates from the Victim Advocate Program have been trained on victim advocacy through a local law enforcement agency, neither has received training on the Air Force VWAP program.⁴⁶³ The Victim Advocate Coordinator has also offered opportunities for victim advocacy training from civilian law enforcement to members of the Sexual Assault Services Committee.⁴⁶⁴ This civilian training is valuable in that it helps individual providers better understand how to interact with victims, but it does not help Academy service providers understand the Air Force approach to interdisciplinary victim assistance.

The result of this lack of training is an overall lack of understanding about the full scope of responsibilities and interrelationships of the agencies responsible for providing victim support services under the Air Force VWAP.

G. Victim Support

As part of its sexual assault service program, the Academy offers a variety of resources to cadet victims of sexual assault, including professional and peer counseling services, a victim support group, a 24-hour Hotline, and the availability of medical, legal, investigative and other expert assistance.

⁴⁵⁸ Air Force Instruction 51-201, ¶ 7.16.3.

⁴⁵⁹ *See generally*, Air Force Instruction 51-201, Chapter 7.

⁴⁶⁰ Statement of VWAP Representative, 10th Air Base Wing, Exhibit 175, at 1; Memorandum for Record, Telephonic Interview with 10th Security Forces Squadron, Exhibit 186, at 1; Memorandum from 10th Air Base Wing Commander to 10th Air Base Wing Legal Office, (Sept. 13, 2002), Exhibit 183 (appointing members of the Victim and Witness Assistance Council); *see also* Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 3. *But see* Memorandum for Record, Interview with Former Chief of Military Justice, 10th Air Base Wing, Exhibit 169, at 1 (indicating she arranged training for the VWAP paralegal who is no longer at the Academy).

⁴⁶¹ *See* Chaplain Support, this Report, Section III.G.

⁴⁶² Statement of Director, Cadet Counseling Center, Exhibit 33 at 9.

⁴⁶³ *Id.* at 10.

⁴⁶⁴ Statement of Female Group Chaplain, Exhibit 32, at 2.

1. Cadets Advocating Sexual Integrity and Education (CASIE).

Prior to the *Agenda for Change*, the primary gateway for sexual assault victims to be notified of victim support services at the Academy was CASIE, a cadet-staffed organization. CASIE is managed by a second lieutenant who is a new graduate of the Academy. CASIE operates a 24-hour Hotline for confidential⁴⁶⁵ and anonymous sexual assault reporting.⁴⁶⁶

Sexual assault victims and other cadets can contact a CASIE representative on the Hotline or in person to receive information regarding on-base medical, counseling, and spiritual services that are available to sexual assault victims. When a sexual assault victim contacts CASIE, a CASIE representative first confirms whether the victim is safe and, if not, assists in getting the victim into a safe situation. Once a victim is determined to be safe, the CASIE representative assesses whether the victim needs emergency medical or counseling attention, and, if so, assists the victim in getting those services. CASIE representatives also put the victim in contact with a certified victim advocate.⁴⁶⁷ (For a discussion of services provided by the victim advocate, see item 2, this section, below.)

In addition to addressing immediate needs, CASIE representatives provide information on “options,” such as having a rape kit examination, being tested for sexually transmitted diseases, and, if desired, obtaining the morning-after pill (a contraceptive, *not* the drug RU-486 which causes a pharmaceutical abortion). For example, a CASIE representative will describe how a rape kit examination is accomplished, will explain the purpose of such an exam, and will explain how a victim advocate can assist the victim in obtaining the exam.⁴⁶⁸

If requested by the victim, the CASIE representative can also arrange for meetings with AFOSI and the Academy Legal Office for the victim to obtain additional information by discussing their circumstances as a “hypothetical.”⁴⁶⁹ CASIE has minimal contact with 10th Air Base Wing Legal Office which prosecutes criminal cases arising at the Academy.⁴⁷⁰ In some cases, victims receive information on the investigative and judicial processes by CASIE representatives rather than from the subject matter experts at AFOSI and the 10th Air Base Wing Legal Office.⁴⁷¹ This may

⁴⁶⁵ For additional information on the confidential/anonymous reporting system, see this Report, Section III.D., the Unique Reporting System.

⁴⁶⁶ See CASIE Wallet Card, Exhibit 187; Statement of First-Class cadet Male/CASIE Rep, Exhibit 101, at 1; Statement of Victim Advocate Coordinator, Exhibit 50, at 71; DFBLC Operating Instruction 75-7, Cadet Sexual Assault Hotline, Exhibit 188, at 3.

⁴⁶⁷ Statement of Male First-Class cadet/CASIE Rep, Exhibit 101; Statement of Female First-Class cadet/CASIE Rep, Exhibit 19; Statement of Male First-Class cadet/CASIE Rep, Exhibit 100; Statement of CASIE Program Manager, Exhibit 99, at 3; Cadet Sexual Assault Flowchart, Exhibit 189; Statement of Victim Advocate Coordinator, Exhibit 50, at 53-57.

⁴⁶⁸ Statement of Male First-Class cadet/CASIE Rep, Exhibit 101; Statement of Female First-Class cadet/CASIE Rep, Exhibit 100; Statement of CASIE Program Manager, Exhibit 99; CASIE PHONEBOOK, Exhibit 190.

⁴⁶⁹ Statement of Female First-Class cadet, Exhibit 19; Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91 at 3; Statement of CASIE Program Manager, Exhibit 99 at 3-4. Note that AFOSI does not reveal to command the victim’s identity or any facts learned from the victim about the sexual assault unless the victim consents.

⁴⁷⁰ Statement of Staff Judge Advocate, 10th Air Base Wing, Exhibit 403, at 5; For a discussion about the two legal offices at the Academy, the 10th Air Base Wing Legal Office and the Academy Legal Office, see this Report, Section V.C., Legal Offices Advising Commanders.

⁴⁷¹ Statement of Male First-Class cadet/CASIE Rep, Exhibit 101; Statement of Lt Gen Dallager, Exhibit 71, at 71; Statement of the Academy Legal Office, Chief of Military Justice, Exhibit 91, at 6; Memorandum for Record, Interview

result in inaccurate or incomplete information being relayed to the victim, which can in turn create disappointment or unattainable expectations in the mind of the victim. For example, the victim may receive misinformation about what will be involved in investigating or prosecuting the case and then be disappointed or even angry when their reality differs from their expectations.

While sexual assault victims are made aware of on-base counseling and support services, victims are not usually advised of any off-base services, although the Air Force Instruction indicates victims should be made aware of these as well.⁴⁷²

Based upon reports from cadets, coaches, and the Superintendent's January 2003 Sexual Assault Services survey, cadets report a high awareness and generally positive view of the CASIE program.⁴⁷³ However, the positive impression of CASIE was not universally reflected in the January 2003 survey. Over half (56%) of the female First-Class cadets endorsed the use of an outside source to report sexual assault rather than the CASIE Hotline.⁴⁷⁴ The survey data does not indicate the reason for this view. The survey reflected similarly high numbers of female First-Class cadets (53%) who indicated they did not agree that that Academy leadership was interested in helping sexual assault victims recover from the consequences of sexual assault.⁴⁷⁵ Fifty-four percent of the female First-Class cadets also disagreed that the Academy leadership was interested in identifying sexual assault perpetrators and bringing them to justice.⁴⁷⁶ Seventy percent of the female First-Class cadets did not believe the attitude around the Academy was supportive of care and concern for victims of sexual assault.⁴⁷⁷ Similar responses, but at a slightly lower percentage, were also given by female Second-Class cadets on these topics.⁴⁷⁸

with Brig Gen Gilbert, Exhibit 157; Telephonic Interview with Former Chief of Military Justice, 10th Air Base Wing, Exhibit 169, at 3.

⁴⁷² See Air Force Instruction 51-201, Section 7D, noting Figure 7.3, ¶¶ 7.10.12, 7.10.13, 7.16.5; *see also* DoD Instruction 1030.2, ¶ 6.1.4; Statement of Male First-Class cadet/CASIE Rep, Exhibit 100 at 1. *See generally* statement of CASIE Program Manager, Exhibit 99, at 4-5.

⁴⁷³ Memorandum for Record, Group Interview with Coaches, Exhibit 369; Memorandum for Record, Group Interview with Female Cadets, Exhibit 56; Memorandum for Record, Group Interview with Cadet Leaders, Exhibit 370; Memorandum for Record, Group Interview with Cadet Wing Leaders, Exhibit 25; Memorandum for Record, Group Interview, Male Cadets, Exhibit 161; Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 210. Positive comments by cadets on the January 2003 Cadet Wing survey included:

“...CASIE has been an excellent program in helping cadets become more aware of the problem.”

“The CASIE representative I talked to was very helpful and I could not have made it without her help.”

“The CASIE representatives seem to be very concerned for us and our safety as females. One of the things I worried about when deciding to choose to come to the Academy or not was the fact that females are vastly outnumbered...Once I received my first CASIE brief, I was much relieved to find out that there is a support network of people who are genuinely concerned for my safety....”

“...CASIE and [the Counseling Center]...have helped me tremendously and are part of the reason I am still here and did not leave after my attack.”

“I appreciate the availability of CASIE members and I hope that the Hotline card that I carry on me is kept and used by all cadets. It proved extremely helpful when a cadet I knew approached me about being sexually assaulted.”

Cadet Written Comments to Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143.

⁴⁷⁴ Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 210, at 16.

⁴⁷⁵ *Id.* at 13.

⁴⁷⁶ *Id.* at 12.

⁴⁷⁷ *Id.* at 7.

⁴⁷⁸ *Id.* at 7, 12, 13, and 16.

2. The Victim Advocate Program

The Academy, through Sexual Assault Services within the Cadet Counseling Center, has a Victim Advocate Program designed to provide dedicated support to sexual assault victims.⁴⁷⁹ The Coordinator of this program, who also serves as one of the victim advocates, is a retired lieutenant colonel and registered nurse.⁴⁸⁰

According to USAFA Instruction 51-201, the primary role of the victim advocate is to ensure the victim is afforded necessary services, provide assistance in understanding the phases of case progression, and provide assistance to the victim in making decisions regarding their case.⁴⁸¹ In this role, the Coordinator and the one other victim advocate meet with sexual assault victims to advise them of their options regarding reporting and identify on-base resources. The victim advocate will also assist the victim in obtaining support services such as counseling or medical treatment. If the victim is willing to have a rape kit exam performed, the victim advocate arranges to have the exam accomplished with as little disruption to the victim as possible and without exposing the victim's identity to others at the Academy. The victim advocate transports the victim in the victim advocate's personal vehicle to Memorial Hospital and remains with the victim at the hospital. The victim advocate encourages counseling and makes victims aware of a cadet-run Sexual Assault Victim Support Group. The victim advocate provides transportation, if required, to appointments related to the sexual assault. Also, if the victim requests, the victim advocate will sit with the victim during investigative interviews or other appointments related to the sexual assault.⁴⁸²

The Coordinator has an enormous commitment to victim support and has been described as "a Victim Advocate all the way down to her soul."⁴⁸³ For example, she will routinely use her own funds to buy a meal for victims following a rape kit exam in order to allow the victim time to unwind before returning to the Academy.⁴⁸⁴ She also remains at the Cadet Counseling Center late on Tuesday evenings, so she can be available for the cadet-run Sexual Assault Victim Support Group that meets there.⁴⁸⁵ In one case, she advocated to the leadership on behalf of a victim who was scheduled to testify in an Article 32 hearing on the same day she was about to be given a Form 10,⁴⁸⁶ a formal notification of possible cadet discipline. As a result of her efforts, the Form 10 was

⁴⁷⁹ USAFA Instruction 51-201, ¶ 2.6, Exhibit 55.

⁴⁸⁰ Statement of Victim Advocate Coordinator, Exhibit 50, at 2-3.

⁴⁸¹ USAFA Instruction 51-201, ¶ 2.6, Exhibit 55.

⁴⁸² Statement of Victim Advocate Coordinator, Exhibit 50, at 4-5, 23-24; Statement of AFOSI Detachment Commander, Exhibit 177 at 2; Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2-3.

⁴⁸³ Statement of Vice Commandant, Exhibit 124, at 27. *See also* Statement of former Commandant, Exhibit 64, at 27; Statement of Victim Advocate Coordinator, Exhibit 50 at 44; Memorandum for Record, Interview with Anonymous Victim Support Group Member, Exhibit 262; Memorandum for Record, Interview with Counseling Center Personnel, Exhibit 154; Memorandum for Record, Interview with Victim Support Group, Exhibit 137; Memorandum for Record, Telephonic Interview with Former CASIE Program Manager, Exhibit 172.

⁴⁸⁴ Statement of Victim Advocate Coordinator, Exhibit 50 at 44.

⁴⁸⁵ Statement of Victim Advocate Coordinator, Exhibit 352.

⁴⁸⁶ An AF Cadet Wing Form 10, Report of Conduct a Cadet Wing form for reporting cadet conduct. *See generally* AF Cadet Wing Instruction 51-201, Discipline and Probation System, Exhibit 265. When a cadet is alleged to have engaged in misconduct, the cadet will receive a Form 10 notifying him or her of the allegation and the cadet is given an opportunity to respond. Often after the cadet submits the response, punishment follows. *See*, this Report, Section III.E., Amnesty for Victims.

held in abeyance and the victim was able to testify without having the additional stress or distraction of having received a Form 10.⁴⁸⁷

3. Legal Office Support

The Academy currently has two legal offices: the 10th Air Base Wing and the Academy Legal Office.⁴⁸⁸ Under Air Force Instruction 51-201 and under a delegation from the 10th Air Base Wing Commander, the 10th Air Base Wing Staff Judge Advocate (SJA) is the installation official responsible for administering the base Victim Witness Assistance Program (VWAP).⁴⁸⁹ Despite this overall responsibility, the Air Base Wing Legal Office has had little interaction with CASIE, the Victim Advocate Program, or the Sexual Assault Services Committee, which was designed to ensure an interdisciplinary approach to assisting sexual assault victims.⁴⁹⁰

The 10th Air Base Wing Legal Office should provide information, referrals, and assistance (similar to the information received through a CASIE representative or victim advocate) through a victim liaison appointed by the SJA. Under the instruction, these services are to be provided to any victim of an offense punishable under the Uniform Code of Military Justice (UCMJ).⁴⁹¹

However, in practice, the 10th Air Base Wing provides victim support only in cases involving Uniform Code of Military Justice (UCMJ) actions. It provides no victim support for matters handled through the cadet disciplinary system even though some offenses handled through the cadet disciplinary system (e.g., some assaults) are punishable under the UCMJ.⁴⁹²

In sexual assault cases that go to court-martial, the 10th Air Base Wing Legal Office distributes to the victim the DD Form 2701, *Initial Information for Victims and Witnesses of Crimes*, which is required under Air Force Instruction 51-201 and DoD Instruction 1030.2.⁴⁹³ The information on the form includes a list of the victim's rights; contact numbers for additional information on available assistance, investigation status, prosecution status, and compensation; and direction on what to do if the victim is threatened or harassed.⁴⁹⁴

Through referrals from CASIE or a victim advocate, sexual assault victims are offered the opportunity to present a "hypothetical." If the victim chooses, the victim or the victim advocate presents the facts of the assault to an attorney from the Academy Legal Office and the attorney tells the victim what is likely to occur based on those facts. This information assists the victim in

⁴⁸⁷ Statement of Victim Advocate Coordinator, Exhibit 50, at 116-117.

⁴⁸⁸ Statement of Academy Staff Judge Advocate, Exhibit 162 at 1; Statement of Staff Judge Advocate, 10th Air Base Wing, Exhibit 403, at 1. See this Report, Section V.C., Legal Offices Advising Commanders.

⁴⁸⁹ Air Force Instruction 51-201, ¶ 7.7; Letter of Delegation of VWAP Locally Responsible Official Duties, May 23, 2001, Exhibit 166.

⁴⁹⁰ USAFA Instruction 51-201, ¶ 2.4; See Statement of VWAP Representative, 10th Air Base Wing, Exhibit 175; Statement of Staff Judge Advocate, 10th Air Base Wing, Exhibit 403, at 5. See also Sexual Assault Services Committee Meeting Minutes, Sept. 13, 2000 to January 31, 2003, Exhibit 70 through Exhibit 81 (reflecting no involvement by 10th Air Base Wing Legal Office); Memorandum for Record, Telephonic Interview with Former Chief of Military Justice, 10th Air Base Wing, Exhibit 169, at 1.

⁴⁹¹ Air Force Instruction 51-201, ¶ 7.8 and ¶ 7.1.1 and Section 7D.

⁴⁹² Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91 at 3; Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 4-5; Statement of Staff Judge Advocate, 10th Air Base Wing, Exhibit 162, at 12.

⁴⁹³ Air Force Instruction 51-201, Fig. 7.1; DoD Instruction 1030.2, ¶ 6.1; Statement of VWAP Representative, 10th Air Base Wing, Exhibit 175, at 2.

⁴⁹⁴ DD Form 2701, Pamphlet, Initial Information for Victims and Witnesses of Crimes, Exhibit 367.

deciding whether to make a formal report and to have the matter investigated under a system that allowed victims to control the process.⁴⁹⁵

4. Counseling Center Support

The Cadet Counseling Center is aligned under the Department of Behavioral Sciences and Leadership which currently reports to the Dean of Faculty.⁴⁹⁶ The Cadet Counseling Center provides counseling services to cadets for a variety of issues and houses Sexual Assault Services, which provides sexual assault and sexual abuse counseling and sexual assault education and prevention.⁴⁹⁷ There is no cost to cadets for these counseling services. The Cadet Counseling Center is staffed by four Ph.D. psychologists, three licensed clinical psychologists, one licensed professional counselor, one masters-level social worker, one masters-level counselor, a program manager for the Victim Advocate Program who is a registered nurse and also serves as a victim advocate, one program manager for the CASIE program who also serves as a victim advocate, and one office manager.⁴⁹⁸ One of the counselors is responsible for handling alcohol issues. The counselors also serve as faculty members for the Department of Behavioral Sciences and Leadership. Each counselor's number of teaching hours varies.⁴⁹⁹

The Cadet Counseling Center has held an accreditation from the International Association of Counseling Services since 1991.⁵⁰⁰ Part of the accreditation standards requires a policy of limited confidentiality.⁵⁰¹ The Cadet Counseling Center primarily provides individual counseling, but also provides some group counseling. Sexual assault victims are aware of the sexual assault counseling services available at the Cadet Counseling Center through outreach efforts and briefings by CASIE representatives and victim advocates. Generally, a sexual assault victim is referred for counseling by a victim advocate or a CASIE representative.⁵⁰²

5. Sexual Assault Victim Support Group

The sexual assault victim support group is a cadet-led victim support tool and cadets are the only participants. It operates unofficially, but with the approval of the Cadet Counseling Center. The Victim Advocate Coordinator is the unofficial advisor for the group.⁵⁰³ The group began in February 1995 when two female cadet sexual assault victims asked the Coordinator if they could start a support group. The Coordinator does not actively participate in the discussion, nor does she usually remain with the group. She will only stay the first few minutes of the meeting to determine

⁴⁹⁵ Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91, at 3; Statement of CASIE Program Manager, Exhibit 99, at 5; Statement of Academy Staff Judge Advocate, Exhibit 162, at 10.

⁴⁹⁶ Statement of Director, Cadet Counseling Center, Exhibit 33, at 1; Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 1.

⁴⁹⁷ Brochure, Cadet Counseling and Leadership Development Center: A Guide to Services, Exhibit 349.

⁴⁹⁸ Statement of Director, Cadet Counseling Center, Exhibit 33, at 2.

⁴⁹⁹ Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 5; Statement of Counseling Center Director, Exhibit 33, at 3-4.

⁵⁰⁰ Brochure, Cadet Counseling and Leadership Development Center: A Guide to Services, Exhibit 349.

⁵⁰¹ International Association of Counseling Services Accreditation Standards, Exhibit 130. See this Report, Section III.D. The Unique Reporting System, for additional information on the confidentiality standards required for accreditation.

⁵⁰² Statement of Director, Cadet Counseling Center, Exhibit 33, at 2-3; Statement of Victim Advocate Coordinator, Exhibit 50, at 18-19.

⁵⁰³ Statement of Victim Advocate Coordinator, Exhibit 352, at 2-3.

that the participants are coping well.⁵⁰⁴ No professional counselors sit in on the sessions.⁵⁰⁵ According to one participant, the group is not designed to be therapeutic; it is more a social outlet.⁵⁰⁶

The group meets weekly and its size varies. The group consisted of approximately four members present at the Academy in February 2003.⁵⁰⁷ Participants may come in only for a few sessions. Participation is strictly voluntary and attendance is not monitored in any formal way, though other support group members may check on a “regular” member who is absent. Sexual assault victims are made aware of the availability of this support group through the victim advocate. Some participants have been a part of the group for more than a year.⁵⁰⁸

6. Medical Support

The 10th Medical Group operates hospital and clinic facilities at the Academy. The hospital is located “down the hill” approximately two miles from the cadet dormitories. The 10th Medical Group, through the Medical Operations Squadron, operates the Cadet Clinic adjacent to Fairchild Hall within a few minutes’ walking distance from the cadet dormitories.⁵⁰⁹ At the hospital and the Cadet Clinic, in accordance with USAFA Instruction 51-201, sexual assault victims can receive confidential medical treatment, testing for sexually transmitted diseases and the morning-after pill.⁵¹⁰ There is no cost to the cadet for these services.

There is currently no military database system to code sexual assault cases in military treatment facilities. However, the Academy uses a medical data tracking system that has codes that could be used for sexual assault. The system indicates only three patients were seen for issues relating to sexual assault in the last three years. The Medical Operations Squadron commander explained that the numbers may not accurately reflect the true number of sexual assault victims seen, because it is the practitioner’s individual determination of facts as to why the patient is being seen that dictates how the case is coded for the database.⁵¹¹

The 10th Medical Group has a Memorandum of Understanding with Memorial Hospital in Colorado Springs, Colorado, to provide rape kit exams through the services of Sexual Assault Nurse Examiner (SANE nurse).⁵¹² In addition to performing the rape kit exam, Memorial Hospital will also treat any immediate injuries and prescribe medications to prevent sexually transmitted diseases

⁵⁰⁴ *Id.*, See also Statement of Victim Advocate Coordinator, Exhibit 50, at 128.

⁵⁰⁵ Statement of Victim Advocate Coordinator, Exhibit 352, at 3.

⁵⁰⁶ Memorandum for Record, Interview with Anonymous Victim Support Group member, Exhibit 262.

⁵⁰⁷ Memorandum for Record, Interview with Victim Support Group, Exhibit 167.

⁵⁰⁸ Statement of Victim Advocate Coordinator, Exhibit 352, at 3.

⁵⁰⁹ Telephonic Interview with Commander, 10th Security Forces Squadron, Exhibit 186.

⁵¹⁰ The morning-after pill is a contraceptive, not the drug RU-486. Statement of CASIE Program Manager, Exhibit 99, at 4; Statement of Officer from Medical Group, Exhibit 184, at 2; Statement of Male First-Class cadet CASIE/Rep, Exhibit 101, at 2. For additional information regarding the Academy’s use of the morning-after pill, see Memorandum, Re: Addition of ‘Plan B’ as ‘Morning After Pill’ to Base Core Formulary, Exhibit 354.

⁵¹¹ Statement of Officers from Medical Group, Exhibit 184 at 1-2; E-mail to Counseling Center Director, March 4, 2003, Exhibit 360.

⁵¹² Memorandum of Agreement Between Academy and Memorial Hospital, Exhibit 404. Note that this is not an Academy-unique arrangement. Memorial Hospital has the only Sexual Assault Treatment Team in the local area and provides the same services for Fort Carson, Peterson Air Force Base and two other major local hospitals. Memorandum for Record, Telephonic Interview with SANE Nurse, Exhibit 379.

and pregnancy.⁵¹³ A sexual assault victim who is willing to have a rape kit exam performed is transported to Memorial Hospital by a victim advocate, who remains with the victim at the hospital during the exam.⁵¹⁴ Memorial Hospital began performing rape kit exams with SANE nurses approximately nine years ago and it currently has ten certified SANE nurses.⁵¹⁵ The use of Memorial Hospital's services has been related to the unique expertise and facilities available there, as described below.

A SANE nurse is a registered nurse who has advanced education and clinical preparation in forensic examination of sexual assault victims and is trained to offer sexual assault victims prompt, compassionate care and comprehensive forensic evidence collection.⁵¹⁶

In addition to having specially qualified and experienced SANE nurses available to perform these exams, Memorial Hospital also has specialized equipment known as a colposcope. The colposcope is a microscope configured with a 35-millimeter camera which allows photographs of micro-tears in the genital area or other parts of the body which would be otherwise invisible to the naked eye.⁵¹⁷ These photographs may be relevant to the force element of a rape allegation.

The initiative by Air Force leadership to begin rape kit exams at the Hospital and/or the Cadet Clinic, while motivated by the desire to provide resources as quickly as possible, should take into account the need for trained staff with adequate proficiency as well as the need for specialized equipment. An additional consideration may be the enhanced privacy afforded cadets by having such procedures performed away from the Academy. Concerns about having rape kit exams performed at the Academy have been raised by the Air Force Surgeon General, 10th Medical Group personnel and others.⁵¹⁸

⁵¹³ Memorandum for Record, Telephonic Interview with Forensic Specialist Nurse, Exhibit 353 at 1.

⁵¹⁴ Statement of Victim Advocate Coordinator, Exhibit 50 at 4 and 25.

⁵¹⁵ Memorandum for Record, Telephonic Interview with Forensic Specialist Nurse, Exhibit 353 at 1.

⁵¹⁶ SANE programs were developed throughout the United States to address problems with the medical-legal response to sexual assault victims in hospital emergency rooms. These include: 1) a lack of urgency by emergency room staff resulting in long waits for victims who must not eat, drink, shower or urinate until the exam is completed; 2) lack of training by physicians and nurses in performing evidentiary exams; 3) lack of proficiency because providers do not perform the procedures frequently enough to maintain proficiency; 4) reluctance by physicians to perform exams due to fear of being called to testify; 5) failure by emergency room staff to understand and be sensitive to the needs of the victim; and 6) failure by emergency room staff to gather and/or document all available forensic evidence. U.S. Department of Justice, Office for Victims of Crime Bulletin, "Sexual Assault Nurse Examiner (SANE) Programs: Improving the Community Response to Sexual Assault Victims," available at http://www.ojp.usdoj.gov/ovc/publications/bulletins/sane_4_2001.

⁵¹⁷ Statement of Victim Advocate Coordinator, Exhibit 50, at 78.

⁵¹⁸ A letter dated April 16, 2003 from the Air Force Surgeon General to the General Counsel's Working Group expressed "serious concerns" about a possible recommendation that rape exams be performed at the 10th Medical Group. The letter states that it would be extremely difficult for the 10th Medical Group to provide the standard of care currently obtained in the community for rape exams. The Surgeon General stressed that extensive training is required for SANE nurses and that significant experience is needed to make these nurses credible witnesses during court testimony. He emphasized the high number of exams performed by Memorial Hospital and indicated that it was unlikely the number of cases at the Academy would be adequate to keep a SANE nurse from the 10th Medical Group proficient. Memorandum from USAF Surgeon General, Exhibit 378. *See also*, Memorandum for Record, Telephonic Interview with Physician, Cadet Clinic, Exhibit 174 (expressing concern about performing rape kits). *See also* Memorandum for Record, Telephonic Interview with Forensic Specialist Nurse, Exhibit 353, at 2.

7. Chaplain Support

The Academy has thirteen chaplains of various faiths. None of the chaplains has any specialized training in dealing with sexual assault victims.⁵¹⁹ However, chaplains often see sexual assault victims and can offer confidentiality through the priest-penitent privilege.⁵²⁰ The services provided by the chaplains primarily include counseling and referral to other support service providers both on- and off-base. Chaplains also occasionally provide transportation services for victims to off-base support service providers.⁵²¹

At the Academy there are staff chaplains who are located at the chapel offices and each of the Groups in the Cadet Wing also has an assigned chaplain. The Group Chaplain's office is located in the dormitory in the area where the cadets from the assigned group are housed. Cadets from any Group are welcome to walk in or to schedule an appointment. One Group Chaplain reported that in the three years she has been assigned to the Academy she has seen thirteen sexual assault victims. Until recently, this chaplain had been the only female chaplain and the only African-American chaplain at the Academy.⁵²² Another female staff chaplain was assigned to the Academy in December 2002. She has seen eight sexual assault victims, three of which were basic cadet trainees.⁵²³ Both female chaplains stated that the majority of the cadets they have seen did not report their assaults.⁵²⁴

Through a series of briefings and personal interactions, sexual assault victims are aware that confidential counseling services with the chaplains are available. At Basic Cadet Training (BCT), chaplains provide a briefing to make cadets aware that they are available and to describe generally the services that are available to them. In addition, chaplains provide a similar briefing to Fourth-Class cadets who voluntarily participate in a chapel outing known as "Doolie Retreat." Chaplains also provide a series of briefings to Third-Class cadets (sophomores) during a series of briefings at a six-week Academy exercise known as Global Engagement which is held at Jack's Valley, Colorado. The chaplains there advise cadets on how chaplains can assist them now as cadets and how chaplains assist commanders. In addition, Group Chaplains also conduct periodic briefings to squadrons on current "hot topics" and may include references to counseling services. Posters identifying each Group Chaplain, available services, and contact information are also posted in the dormitories.⁵²⁵

The chaplains do not appear to be knowledgeable about either the Air Force or the Academy victim assistance programs, beyond the existence of the CASIE Hotline and CASIE representatives.⁵²⁶ Both female chaplains report that they have developed their own list of off-base resources. These two chaplains also report that they have had no training on the Air Force VWAP

⁵¹⁹ Memorandum for Record, Academy Senior Chaplain, Exhibit 351.

⁵²⁰ The priest-penitent privilege is a privilege recognized in law which allows communications made by an individual to a clergyman as a formal act of religion or as a matter of conscience to remain confidential. *See* MCM, MIL. R. EVID. 503 (2002).

⁵²¹ Statement of Female Group Chaplain, Exhibit 32, at 2; Statement of Female Staff Chaplain, Exhibit 30, at 2; Off-Base Resource List, Exhibit 365.

⁵²² Statement of Female Group Chaplain, Exhibit 32, at 1.

⁵²³ Statement of Female Staff Chaplain, Exhibit 30, at 1-2.

⁵²⁴ Memorandum for Record, Summary of Chaplain Interviews, March 28, 2003, Exhibit 373; Statement of Female Staff Chaplain, Exhibit 30, at 2.

⁵²⁵ Statement of Female Group Chaplain, Exhibit 32, at 2.

⁵²⁶ *See generally* Statement of Female Group Chaplain, Exhibit 32; Statement of Female Staff Chaplain, Exhibit 30.

program and little training on the Academy's program. However, one of the female chaplains has engaged in significant self-study.⁵²⁷

8. Investigative Support

The Air Force Office of Special Investigations (AFOSI) and Security Forces are the two agencies with authority to investigate crimes at Air Force installations.⁵²⁸ AFOSI is the primary investigative agency for sexual assault allegations at the Academy.⁵²⁹ In addition to investigating allegations of sexual assault when the victim is willing to come forward, under the Academy's unique system of allowing victims to remain anonymous, AFOSI has provided "hypothetical" consultation services for victims who have not yet decided whether they want an investigation to occur. The victim or the victim advocate can discuss a "hypothetical" with AFOSI in which the facts of the assault are presented and the AFOSI provides the victim with information on what is likely to happen based on those facts.⁵³⁰

Security Forces is involved in two aspects with regard to direct support of sexual assault victims. First, Security Forces is responsible for the collection and maintenance of physical evidence related to a sexual assault. The second support role is mandated under Air Force Instruction 51-201, Chapter 7, which requires Security Forces to provide victims with a DD Form 2701 which makes them aware of their rights as victims and provides contact telephone numbers for information on victim assistance, investigation status, and prosecution status.⁵³¹ According to the Security Forces Squadron Commander, the Form would be provided by the initial responding patrolman.⁵³²

Since 1996, the Academy has had concurrent jurisdiction with the State of Colorado over offenses that occur on Academy property, meaning that either the Air Force or the State via local law enforcement authorities can respond to criminal activity on the installation.⁵³³ In 1998, the Academy and the El Paso County Sheriff's Office entered into a memorandum of agreement dividing responsibilities between the Sheriff's Office and the Academy's law enforcement functions. Under the memorandum, the Academy has primary responsibility for responding to and investigating most offenses, including felonies, juvenile offenses and misdemeanors and petty offenses, other than those relating to acts of domestic violence committed by individuals not subject to the Uniform Code of Military Justice. Thus, this memorandum has the effect of placing primary responsibility on Academy law enforcement for investigation of sexual assaults upon cadets on Academy grounds.⁵³⁴

⁵²⁷ Statement of Female Group Chaplain, Exhibit 32, at 2; Statement of Female Staff Chaplain, Exhibit 30, at 3.

⁵²⁸ See this Report, Sections V(A) and (B), Air Force Office of Special Investigations and 10th Security Forces Squadron.

⁵²⁹ Memorandum for Record, Former AFOSI Detachment Commander, Exhibit 178 at 1; Statement of Former AFOSI Detachment Commander, Exhibit 176, at 1. See also USAFA Instruction 51-201, ¶ 2.7.

⁵³⁰ Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2; Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242; Memorandum for Record, Interview with Victim Support Group, Exhibit 137. Note that elsewhere in the Air Force this option for a confidential meeting in which the victim can opt to remain anonymous does not exist.

⁵³¹ Air Force Instruction 51-201, Figure 7.1.

⁵³² Summarized Statement, Commander, 10th Security Forces Squadron, Exhibit 178 at 5.

⁵³³ Staff Summary Sheet, Re: Academy Legislative Jurisdiction, Exhibit 252, (indicating acceptance by Secretary of the Air Force of concurrent jurisdiction over the Academy grounds from the State of Colorado).

⁵³⁴ Memorandum of Agreement Between the United States Air Force Academy and El Paso County Sheriff's Office, Exhibit 363. The memorandum of agreement also specifies certain areas of Academy property where the El Paso

9. Family Support Center

Air Force Instruction 51-201 identifies the Family Support Center as a key agency in the delivery of victim support services.⁵³⁵ Despite its name, the Family Support Center provides services to all military members, married or single, including cadets. The Family Support Center has significant resources materials and knowledge of available resources to assist victims. However, the Family Support Center has had no involvement with the Sexual Assault Services Committee, though it is a member of the Victim and Witness Assistance Council organized by the 10th Air Base Wing Legal Office.⁵³⁶

10. Off-Base Support

Under Air Force Instruction 51-201, off-base victim support services are one component of the Air Force Victim Witness Assistance Program.⁵³⁷ There are a few off-base agencies that provide support services to victims within proximity of the Academy. These are not widely known to cadet victims, CASIE representatives, or victim advocates. Statements from CASIE representatives and victim advocates suggest that victims are not referred to off-base agencies unless the victims specifically ask, and even then they may be discouraged from using these resources.⁵³⁸

(a) TESSA

TESSA (an acronym for Trust, Education, Safety, Support, and Action) is a private, non-profit organization which provides support services for victims of domestic violence and sexual assault in Colorado Springs. These services include, but are not limited to, counseling, victim support groups, and assistance in obtaining restraining orders.⁵³⁹ TESSA provides services to approximately 800 victims annually from the county area. Over the last twelve years, the TESSA Executive Director estimates it has seen thirty-eight Academy cadets who alleged they were sexual assault victims.⁵⁴⁰ According to the Director of Clinical Services for TESSA, the cadets they have counseled often report that they come to TESSA because TESSA offers complete confidentiality.⁵⁴¹

(b) Local Civilian Law Enforcement Victim Services

County Sheriff's Office, Colorado Highway Patrol, or Colorado Springs Police Department will serve as primary responders, but these do not include the areas where the Academy dormitories, academic buildings or athletic training facilities are located. *Id.*

⁵³⁵ Air Force Instruction 51-201, ¶ 7.10.12 and Figure 7.1.

⁵³⁶ Memorandum for Record, Interview with Director, Family Support Center, Exhibit 374.

⁵³⁷ See Air Force Instruction 51-201, Section 7D, noting Figure 7.3, ¶¶ 7.10.12, 7.10.13, 7.16.5. See also DoD Instruction 1030.2, ¶ 6.1.4.

⁵³⁸ Statement of Victim Advocate Coordinator, Exhibit 50 at 41-43; Statement of Two First-Class Female Cadets, Exhibit 136; Statement of Counseling Center Director, Exhibit 33, at 10. See generally Statement of CASIE Program Manager, Exhibit 99, at 4-5; and Statement of Male First-Class cadet CASIE Representative, Exhibit 100, at 1.

⁵³⁹ Brochure, Trust, Education, Safety, Support, and Action, Exhibit 366.

⁵⁴⁰ Matrix Prepared by TESSA of Sexual Assault Reports by Academy Cadets, Exhibit 350. At the request of the Working Group, TESSA contacted several of the cadets it has counseled to see if any would be willing to be interviewed; none were.

⁵⁴¹ Memorandum for Record, Interview with TESSA Director of Clinical Services, Exhibit 243, at 1.

The Colorado Springs Police Department is listed in USAFA Instruction 51-201 as one of the victim support service agencies.⁵⁴²

However, the Colorado Springs Police Department stopped handling Academy cases approximately eight or nine years ago. Instead, the services are now provided by the El Paso County Sheriff's Office, which is not listed in USAFA Instruction 51-201.⁵⁴³

The El Paso County Sheriff's Office has a victim advocacy program known as El Paso County Victims' Services. It provides victims with information on referrals and their victim compensation fund program. The Sheriff's Office refers victims to TESSA or to local private practice counselors experienced in dealing with trauma and sexual assault. The coordinator for the El Paso County Victims' Services stated that they have not seen any cadets as victims, but believe cadets are aware of their services because there have been five cases in which cadets brought civilian victims to the Victims' Services office.⁵⁴⁴

(c) Other Off-Base Victim Support Services

There are other private victim support services located near the Academy which could be used to supplement existing sources for providing information and assistance to sexual assault victims. One is the Rape Assistance and Awareness Program (RAAP) in Denver, Colorado. It provides a Hotline, victim advocates, counseling sessions, and an extensive website.⁵⁴⁵ One of the chaplains at the Academy makes victims aware of this resource, though not listed in USAFA Instruction 51-201.⁵⁴⁶

The Miles Foundation is not identified as a victim support resource in USAFA Instruction 51-201. Nevertheless, it is an active private, non-profit organization based in Newton, Connecticut. The Miles Foundation has a toll-free twenty-four hour Advocacy Helpline (1-877-570-0688) for victims of interpersonal violence associated with the military. Part of the information includes referral to local victim support agencies such as TESSA and Survivors In Service United (SISU).⁵⁴⁷

Survivors In Service United (SISU) is a sister organization to The Miles Foundation and is also not identified as a resource in USAFA Instruction 51-201. SISU provides direct support, information, and victim advocate services; the closest SISU is in Boulder, Colorado.⁵⁴⁸

11. The Academy's Inspector General (IG)

In the Air Force, the Inspector General is the grievance channel to present complaints of wrongdoing when no other means of redress or appeal exist.⁵⁴⁹ Anyone may present a complaint to the Inspector General.⁵⁵⁰ The Inspector General has broad latitude to investigate complaints about

⁵⁴² USAFA Instruction 51-201, ¶ A2.3

⁵⁴³ Memorandum for Record, Interview with Victim Advocate, Colorado Police Department, Exhibit 364.

⁵⁴⁴ Memorandum for Record, Interview with Victim Assistance Program Coordinator, El Paso County Sheriff's Office, Exhibit 372.

⁵⁴⁵ Website Information, Rape Assistance and Awareness Program, Exhibit 368, available at <http://www.raap.org>.

⁵⁴⁶ Statement of Female Group Chaplain, Exhibit 32, at 2.

⁵⁴⁷ Memorandum for Record regarding The Miles Foundation, Exhibit 361.

⁵⁴⁸ *Id.*

⁵⁴⁹ AFD 90-3, ¶ 4.2.

⁵⁵⁰ Air Force Instruction 90-301, ¶ 1.14.7.

Air Force operations, organizations, functions or personnel, but does not investigate matters that are normally addressed through other established grievance or appeal channels unless there is evidence those channels mishandled the matter or the process.⁵⁵¹ Reprisal is a key area of investigation by the Inspector General.⁵⁵² Under the Inspector General system, the identity of a complainant may be protected under the Privacy Act and the Freedom of Information Act.⁵⁵³

The Inspector General at each installation operates independently and reports directly to the installation commander.⁵⁵⁴ The Academy has an Inspector General, but the Office of the Inspector General is not manned to take into account the 4,000 Academy cadets.⁵⁵⁵ The current Inspector General stated that if the manpower assessment for his office were to include the cadets, the number of positions in the Inspector General's office would remain the same, but the Inspector General position would be filled by a colonel rather than a lieutenant colonel.⁵⁵⁶

Both the immediate past and current Inspectors General have made attempts to make contact with the cadet population but there has not been a lot of regular cadet interaction.⁵⁵⁷ The immediate past Inspector General indicated that prior to her arrival, there was no Inspector General briefing to Basic Cadet Training trainees. She began giving briefings to the trainees in 2002 about the role and availability of the Inspector General's office.⁵⁵⁸ The Inspector General's office also briefed the Cadet Wing leadership for the new 2002-2003 year cadet leaders, again on the role and availability of the Inspector General's office.⁵⁵⁹ There were no briefings to the whole Cadet Wing about the Inspector General and its duties and its charter.⁵⁶⁰ This may have resulted in a general lack of awareness among the Cadet Wing of the availability of the Inspector General as an avenue to make complaints.⁵⁶¹

Interviews showed that there is no Inspector General position within the Cadet Wing, despite the fact that the wing is designed to mirror an active duty wing. The past Inspector General indicated that there had been a cadet Inspector General position as of three years ago, but the position was removed, in part because the Inspector General believed a cadet would not be able to

⁵⁵¹ Air Force Instruction 90-301, ¶ 1.40.1. For example, a military member making an initial complaint of sexual harassment to the Inspector General would be referred to the Military Equal Opportunity Office. Once the member exhausts the grievance process available through the Military Equal Opportunity Office, the member could complain to the Inspector General if the member believed the grievance was mishandled. But note that mere dissatisfaction or disagreement with the outcome or findings or an alternative grievance or appeal process is not a sufficient basis to warrant an IG inspection. Air Force Instruction 90-310, ¶ 1.40.1.2.

⁵⁵² Statement of Inspector General, USAFA, Exhibit 356, at 4.

⁵⁵³ Inspectors General must make every effort to protect the identity of complainants and may release the name of a complainant only on as official need-to-know basis. Air Force Instruction 90-301, ¶¶ 2.3.1, 2.3.2.

⁵⁵⁴ Air Force Instruction 90-301, ¶ 1.15.1.

⁵⁵⁵ Statement of Former Academy Inspector General, Exhibit 237 at 3; Statement of Inspector General, USAFA, Exhibit 356, at 1.

⁵⁵⁶ Statement of Inspector General, USAFA, Exhibit 356, at 1.

⁵⁵⁷ *See generally*, Statement of Former Academy Inspector General, Exhibit 237 and Inspector General, USAFA, Exhibit 356 (the whole Cadet Wing is not briefed about the IG and its duties and charter).

⁵⁵⁸ Statement of Former Academy Inspector General, Exhibit 237 at 2. The former Inspector General stated that prior to her arrival, cadets were aware of the Inspector General's office through posters, briefings to Cadet Wing leadership during their planning period, and from the AOCs and MTLs who had also receive a briefing from the Inspector General.

⁵⁵⁹ Statement of Inspector General, USAFA, Exhibit 356, at 2.

⁵⁶⁰ *Id.*

⁵⁶¹ *See* Inspector General, USAFA, Exhibit 356, at 2. (He talked to some cadets in the fall and they did not know the Inspector General existed.)

perform inquiries as part of that function.⁵⁶² The Air Force Inspector General is working with the Academy to determine whether it would be prudent to re-establish a cadet Inspector General function.⁵⁶³

The current Inspector General reported that three sexual assault victims have come to the Inspector General's office in the last two years, but only one provided information on how the system failed her,⁵⁶⁴ which is necessary to proceed with an investigation.⁵⁶⁵

12. The Military Equal Opportunity (MEO) Office

The Military Equal Opportunity (MEO) office runs the Equal Opportunity Treatment program at the base, Major Command and Headquarters levels. A key goal of the Equal Opportunity Treatment program is to eliminate unlawful discrimination against military personnel based on race, color, religion, sex, or national origin.⁵⁶⁶ Under Air Force Instruction 36-2706, the base-level MEO office has the responsibility of processing and resolving complaints of unlawful discrimination and sexual harassment by military members, including cadets, and others.⁵⁶⁷ Despite this requirement, the 10th Air Base Wing MEO office at the Academy has not provided this service to cadets with complaints of cadet-on-cadet sexual harassment, but has processed complaints of cadets against active duty military personnel. According to the current Chief of the MEO office, cadets with complaints of cadet-on-cadet sexual harassment would be referred to the Center for Character Development.⁵⁶⁸

In addition to the responsibility to handle complaints, the 10th Air Base Wing's Military Equal Opportunity office is required under Air Force Instruction 36-2706 to conduct training on Human Relations Education, provide key personnel briefings on the program, and to conduct a Climate Assessment Program comprised of Unit Climate Assessments, "Out and About" Climate Assessments, and Wing or Installation Climate Assessments.⁵⁶⁹ However, the interaction between the 10th Air Base Wing MEO office and Academy is limited to the following: climate assessments of active duty permanent party members of the 34th Training Wing, and on a voluntary basis, DoD civilians attached to the 34th Training Wing; "out and about" visits with the cadets; and conducting a mandatory initial MEO training at Basic Cadet Training for all new trainees. The Chief of the MEO office explained that he was given guidance by personnel at the Center for Character Development that the 34th Training Wing "owns" all climate assessments regarding the Cadet Wing.

⁵⁶² Statement of Former Academy Inspector General, Exhibit 237, at 2.

⁵⁶³ Comment from Air Force Inspector General (Working Group member).

⁵⁶⁴ Statement of Inspector General, USAFA, Exhibit 356, at 4.

⁵⁶⁵ Air Force Instruction 90-301, Table 2.9, Rule 3 (if the complainant refuses to provide sufficient evidence to properly conduct the complaint analysis, the complaint will be dismissed).

⁵⁶⁶ Air Force Instruction 36-2706, ¶ 1.1.

⁵⁶⁷ The preamble of Air Force Instruction 36-2706 on the Military Equal Opportunity Program indicates that the Instruction applies to all personnel who are subject to the Uniform Code of Military Justice, which includes cadets. *See generally, id.* at Chapter 4.

⁵⁶⁸ Memorandum for Record, Telephonic Interview with Chief, Military Equal Opportunity, Exhibit 205, at 1-2. The Director of the Center for Character Development has indicated he is not surprised about the existence of sexual harassment at the Academy, but does not know the extent to which it occurs at the Academy. Statement of the Director, Center for Character Development, Exhibit 204, at 5. *See* Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 2 (describing how such incidents are handled by cadet Human Relations Officers).

⁵⁶⁹ *See generally*, Air Force Instruction 36-2706 at Section 2E, Table 2.2, and Chapter 3.

Therefore, the 10th Air Base Wing MEO office is not involved in conducting any climate assessments of the Cadet Wing.⁵⁷⁰

The Instruction also requires trained MEO instructors to conduct a minimum two hour training session for Academy cadets on MEO within thirty days of the cadets' arrival on station.⁵⁷¹ According to statements, the 10th Air Base Wing MEO office provides this training to trainees at the Academy during Basic Cadet Training.⁵⁷²

The 10th Air Base Wing MEO office also provides assistance in training the cadet Human Relations Education Officers (HREOs). In addition, a trained MEO noncommissioned officer is assigned to the Center for Character Development, and oversees the curriculum provided to HREOs in order to train Fourth-Class cadets in human relations.⁵⁷³

H. Statistics on Sexual Assault

The Working Group attempted to identify all known allegations of sexual assault involving a cadet victim or cadet assailant while the victim or assailant was enrolled at the Academy from January 1, 1993 through December 31, 2002. We identified allegations falling within the Academy's definition of "sexual assault" that were derived from or reflected in a written record known to the Academy prior to January 1, 2003.⁵⁷⁴

1. All Allegations of Sexual Assault

For purposes of overall analysis, we considered all allegations meeting the above criteria as long as the *victim's* allegation fell within the Academy's definition of sexual assault, regardless of whether the actual nature of the act could be ascertained, and regardless of the ultimate substantiation (or lack thereof) of the allegation. We identified 142 such allegations, or an average of approximately fourteen each year over the ten-year period examined. Some were bare reports to CASIE with little or no information on the incident. Chart 1 shows these allegations broken down by the year in which the incident was alleged to have occurred:

⁵⁷⁰ Memorandum for Record, Telephonic Interview with Chief, Military Equal Opportunity, Exhibit 205, at 1.

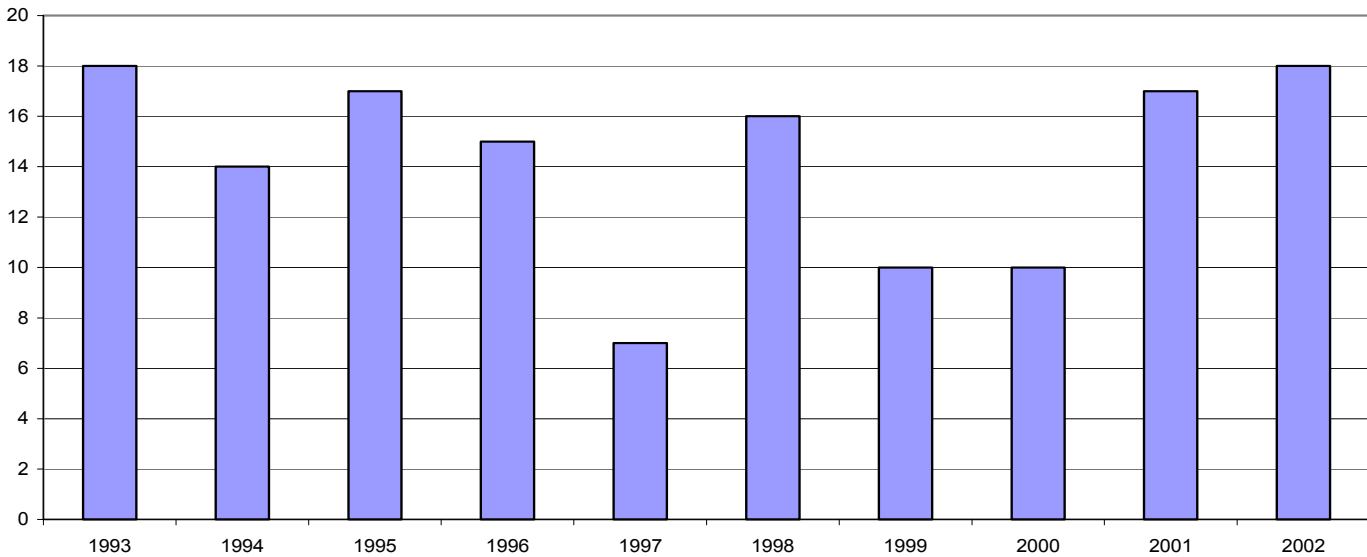
⁵⁷¹ *See generally*, Air Force Instruction 36-2706 at Section 2E, at Table 2.2.

⁵⁷² Memorandum for Record, Telephonic Interview with Chief, Military Equal Opportunity, Exhibit 205.

⁵⁷³ *Id.*

⁵⁷⁴ Allegations unknown to the Academy prior to January 1, 2003 were excluded from the Working Group's analysis in order to focus on *Academy responses* to sexual assault over a ten-year period. This limitation excludes one allegation identified in a letter to the Superintendent and two allegations identified by the media. Additionally, the allegations considered over the ten-year period may not account for those allegations known to congressional offices, allegations made to civilian counseling centers, or allegations reported to only an Academy chaplain with the expectation of confidentiality. Indicators suggest that some of these allegations overlap with each other or with previously identified allegations.

**CHART 1: Allegations of Sexual Assault (CY of Incident)
(Including All Allegations, Regardless of Substantiation)**



*The Academy's definition of sexual assault can cover some acts that would not normally be considered crimes of sexual assault in the Air Force or civilian criminal justice systems. *See* USAFA Instruction 51-201, ¶ 2.2.

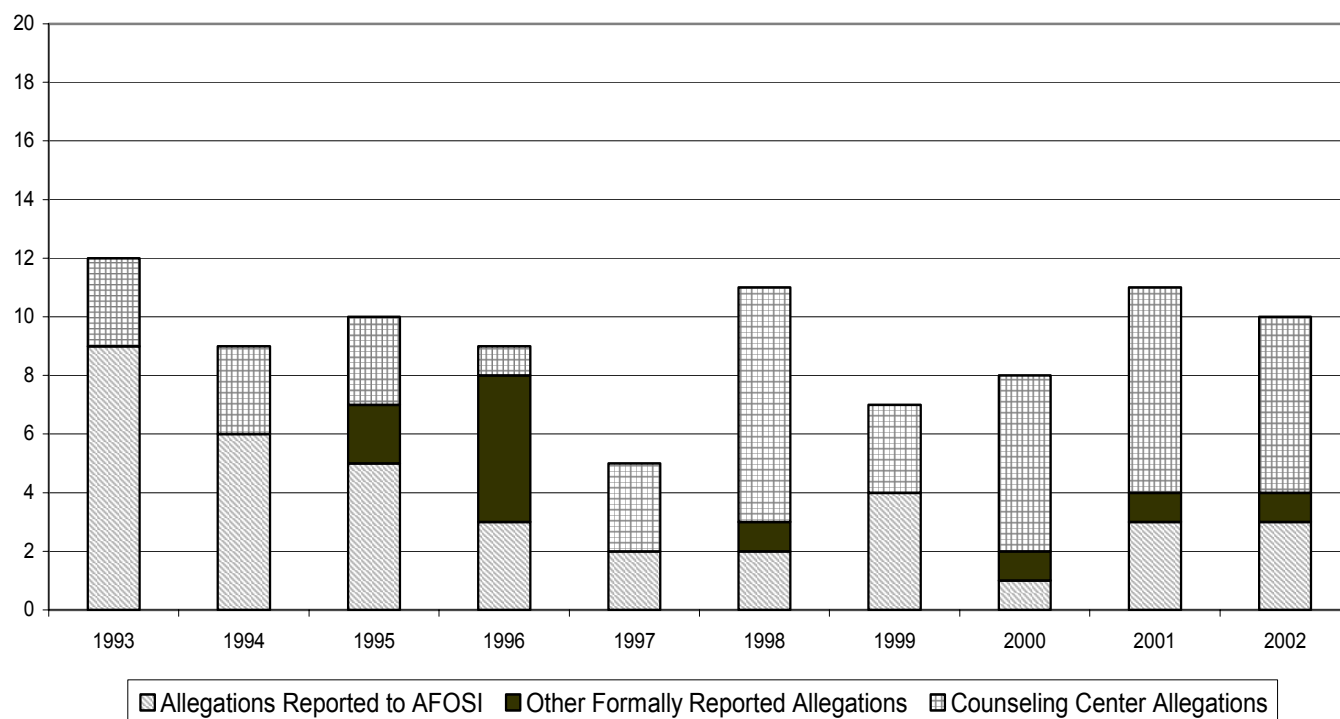
The 142 allegations involve 104 male cadet suspects, which represent 0.7% of the approximately 14,160 male cadets at the Academy from 1993-2002.⁵⁷⁵ The 116 female cadet victims represented in these allegations account for 4.6% of the approximately 2,545 female cadets at the Academy from 1993-2002.⁵⁷⁶ Among the 142 allegations, ninety-three likely involved both a cadet victim and a cadet suspect.⁵⁷⁷ These ninety-three allegations include seven allegations investigated by AFOSI in which the victim was unable to identify the assailant. However, as the alleged incidents occurred in or near the cadet dorms, or in a cadet training area, the assailants were assumed to be cadets. With that assumption, Chart 2 depicts the maximum number of known cadet-on-cadet allegations by the year in which they were alleged to have occurred:

⁵⁷⁵ Data of Sexual Assault Allegations (All Allegations), Exhibit 383, Attachment 4, and Data Spreadsheet, USAFA/XPR, Exhibit 387.

⁵⁷⁶ Data of Sexual Assault Allegations (All Allegations), Exhibit 383, Attachment 4, and Data Spreadsheet, USAFA/XPR, Exhibit 387.

⁵⁷⁷ Data of Sexual Assault Allegations (All Allegations), Exhibit 383, Attachment 4.

**CHART 2: Number of Cadet-on-Cadet Allegations (CY of Incident)
(Including All Allegations, Regardless of Substantiation)**



*The Academy's definition of sexual assault can cover some acts that would not normally be considered crimes of sexual assault in the Air Force or civilian criminal justice systems. *See* USAFA Instruction 51-201, ¶ 2.2.

The number of cadet-on-cadet allegations is relevant because it represents the potential scope of the sexual assault issue that is within the most immediate control of the Academy. While the Academy may be less able to control the circumstances of either non-cadet assailants of cadet victims or cadet assailants of non-cadet victims (especially if not occurring at the Academy), most or all of the cadet-on-cadet allegations fall within the purview of the Academy.

It is significant that little is known about the majority of the 142 allegations, including whether they could be substantiated, their amenability to prosecution, or even in some instances whether they relate to acts that would be considered crimes. The only allegations for which such information could be ascertained are those that either resulted in investigations or contained sufficient information to trigger an investigation.⁵⁷⁸ The Working Group identified sixty-one such allegations that related to acts that would normally be considered crimes of sexual assault and which were investigated in some manner.⁵⁷⁹

⁵⁷⁸ For a discussion of the cases considered by command for action, and an assessment of the viability of those cases for disciplinary action, *see* this Report, Section VI.F., Review of Sexual Assault Cases.

⁵⁷⁹ The sixty-one allegations include twenty-six rape allegations and thirty-five allegations other than rape. (Data of Sexual Assault Allegations (All AFOSI and Command Allegations), Exhibit 383, Attachment 3.) The sixty-one allegations include fifty-seven allegations investigated by AFOSI and four allegations investigated by some other means. *Id.* (The fifty-seven allegations investigated by AFOSI are derived from fifty-three AFOSI records (some of

2. Investigated Cases of Cadet-on-Cadet Incidents

Of the sixty-one sexual assault allegations that led to investigations, forty involved “cadet-on-cadet” incidents that involved both a cadet suspect and a cadet victim (the remaining twenty-one involved either a non-cadet suspect or a non-cadet victim).

Of the forty investigated cadet-on-cadet allegations pertaining to incidents occurring between January 1, 1993 and December 31, 2002, nineteen (or 48%) involved allegations of rape.⁵⁸⁰ Of these nineteen, three were recanted; one other did not identify a suspect; seven others were not viable for criminal charges; and three are currently under investigation. Of the remaining five rape allegations, criminal charges were initiated in two of the five (including one for which charges were dismissed after an Article 32 hearing and one that resulted in an acquittal at a court-martial). Our analysis indicated that the Academy’s decision not to pursue charges in the other three allegations appeared to be due to problematic factual aspects.⁵⁸¹ We found one determination to be within reasonable discretion, and could not make a determination on the other two.⁵⁸² One cadet suspect subsequently resigned in lieu of an involuntary disenrollment. One suspect received cadet discipline. No action was taken as to the third cadet suspect.⁵⁸³

The forty cadet-on-cadet investigated allegations included twenty-one (or 53%) that were allegations of sexual assault other than rape.⁵⁸⁴ Of these twenty-one, three did not identify a suspect, three others were not viable for criminal charges, and one is currently under investigation. Of the remaining fourteen allegations other than rape, criminal charges were initiated in eleven of the fourteen (including six that resulted in Article 15 nonjudicial punishment, four for which charges were dismissed after an Article 32 hearing, and one that resulted in a court-martial conviction). Our analysis indicated that the Academy’s decision not to pursue charges in the other three allegations appeared to be due to problematic factual aspects of those allegations.⁵⁸⁵ We disagreed with the decision not to pursue charges in one case; found one determination to be within reasonable discretion; and could not make a determination in the other.⁵⁸⁶ The Academy initiated disenrollment actions against the cadet suspects identified in these three cases for which criminal charges were not initiated.⁵⁸⁷

Of the forty cadet-on-cadet investigated allegations (including those in which rape and other sexual assaults were alleged), twenty-one (or 53%) involved Fourth-Class cadets as victims

which identified multiple victims) involving incidents alleged to have occurred from January 1, 1993 to December 31, 2002.)

⁵⁸⁰ Except where otherwise noted, the numbers in this paragraph are taken from Data of Sexual Assault Allegations (Additional Breakdown), Exhibit 383, Attachment 10.

⁵⁸¹ For a discussion of the cases considered by command for action, and an assessment of the viability of those cases for disciplinary action, *see* this Report, Section VI., Leadership Issues Pertaining to Sexual Assault at the Academy.

⁵⁸² *See* this Report, Section VI.F., Review of Sexual Assault Cases.

⁵⁸³ Data of Sexual Assault Allegations (Additional Breakdown), Exhibit 383, Attachment 10.

⁵⁸⁴ Except where otherwise noted, the numbers in this paragraph are taken from Data of Sexual Assault Allegations (Additional Breakdown), Exhibit 383, Attachment 10.

⁵⁸⁵ For a discussion of the cases considered by command for action, and an assessment of the viability of those cases for disciplinary action, *see* this Report, Section V., Leadership Issues Pertaining to Sexual Assault at the Academy.

⁵⁸⁶ *See* this Report, Section VI.F., Review of Sexual Assault Cases.

⁵⁸⁷ One of these disenrollments refers to one of the cadets referenced in the paragraph above concerning cadet-on-cadet rape, as there were two separate allegations, one of rape against one victim, and sexual assault other than rape against another.

(although only 29% of the Cadet Wing is comprised of Fourth-Class cadets).⁵⁸⁸ Twenty-two (or 55%) occurred in the cadet dorms. Sixteen (or 40%) involved the use of alcohol by the victim, suspect, or both. Fourteen (or 35%) of the alleged assaults commenced while the victim was either unconscious due to alcohol consumption or asleep. Six (or 15%) of the allegations were reported more than six months after the alleged incident.

3. Cadet Victims

Of the sixty-one investigated allegations, forty-six involved cadet victims, including three male cadets.⁵⁸⁹ Of these forty-six victims, twenty-one (or 46%) were Fourth-Class cadets⁵⁹⁰ (although only 29% of the Cadet Wing is comprised of Fourth-Class cadets).⁵⁹¹ Of the forty-three female victims: five (or 12%) were varsity athletes,⁵⁹² while 33% of all female cadets are varsity athletes;⁵⁹³ eight (or 19%) received either an administrative or medical turnback;⁵⁹⁴ and eight (or 19%) are current cadets or currently on turnback. Excluding the eight female victims who are current cadets or currently on turnback, of the remaining thirty-five female victims: twenty (or 57%) graduated,⁵⁹⁵ compared to an average graduation rate of 71% among all female cadets;⁵⁹⁶ seven (or 20%) voluntarily separated from the Academy;⁵⁹⁷ and eight (or 23%) were involuntarily discharged or resigned in lieu of an administrative discharge (although not necessarily for reasons related to the alleged assault).⁵⁹⁸

4. Cadet Suspects

The sixty-one investigated allegations included fifty-five in which the victim alleged that his or her assailant was a cadet.⁵⁹⁹ From these fifty-five allegations, forty-two cadet suspects were identified by name, including one female cadet.⁶⁰⁰ Of these forty-two cadet suspects: four (or 10%) were alleged to have assaulted more than one victim;⁶⁰¹ and fifteen (or 36%) were First-Class cadets,⁶⁰² although First-Class cadets comprise only 23% of the Cadet Wing.⁶⁰³ The percentage of

⁵⁸⁸ Except where otherwise noted, the numbers in this paragraph are taken from Data of Sexual Assault Allegations (Additional Breakdown), Exhibit 383, Attachment 10.

⁵⁸⁹ Data of Sexual Assault Allegations (Cadet Victims), Exhibit 383, Attachment 5. The remaining fifteen investigations involved non-cadet victims. Data of Sexual Assault Allegations (All Allegations), Exhibit 383, Attachment 4. The forty-six allegations by cadet victims include twenty-one rape allegations and twenty-five allegations other than rape. *Id.*

⁵⁹⁰ *Id.*

⁵⁹¹ Data Spreadsheet, USAFA/XPR, Exhibit 387, at 6.

⁵⁹² Data of Sexual Assault Allegations (Cadet Victims), Exhibit 383, Attachment 5.

⁵⁹³ Data Spreadsheet, USAFA/XPR, Exhibit 387, at 5.

⁵⁹⁴ Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 6.

⁵⁹⁵ *Id.*

⁵⁹⁶ Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7. For the classes of 1993 through 2002, the attrition rate for female cadets was an average of 28.8%. (1993 – 39.1%; 1994 – 29.8%; 1995 – 34.7%; 1996 – 22.8%; 1997 – 36.4%; 1998 – 25.1%; 1999 – 33.5%; 2000 – 23.7%; 2001 – 19.4%; 2002 – 23.2%). *Id.* Although the attrition rate by class does not map precisely to the time period by calendar year, the ten-year average is assumed to approximate the actual value.

⁵⁹⁷ Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 6.

⁵⁹⁸ *Id.*

⁵⁹⁹ Data of Sexual Assault Allegations (Cadet Suspects), Exhibit 383, Attachment 7. The remaining six allegations involved non-cadet suspects. The fifty-five allegations in which a cadet suspect is identified include twenty-four rape allegations and thirty-one allegations other than rape. *Id.*

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.*

⁶⁰² Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8.

male cadet suspects who were recruited athletes,⁶⁰⁴ intercollegiate athletes, and graduates of the Academy Preparatory School roughly reflected the overall composition of male cadets from 1993 through 2002.⁶⁰⁵

Of the forty-two cadet suspects identified by name: six (or 14%) were court-martialed for rape, sodomy, indecent assault or related crimes (five of these were involuntarily discharged after convictions, and one graduated after he was acquitted);⁶⁰⁶ and eight (or 19%) received an Article 15 (three of these resigned, four were involuntarily discharged, and one graduated).⁶⁰⁷ One cadet suspect is still at the Academy. Among the other forty-one cadet suspects no longer at the Academy, twelve (or 29%) were involuntarily discharged,⁶⁰⁸ one (or 2%) voluntarily separated,⁶⁰⁹ nine (or 21%) resigned in lieu of criminal prosecution or administrative action,⁶¹⁰ and nineteen (or 45%) graduated from the Academy.⁶¹¹

We found no consistent mechanisms in effect at the Academy for reliably comparing Academy sexual assault data with other Academies, civilian schools or other institutions. The Academy's unique definition of sexual assault and its unique confidential reporting process make reliable comparisons difficult.

I. Social Climate Surveys

Since the 1991-1992 Academic Year,⁶¹² the Academy has administered to cadets an annual Social Climate Survey. The primary purpose of the survey is to assess six climate factors: race, gender, intercollegiate status, religion, discrimination against majority,⁶¹³ and fear of reprisal.⁶¹⁴ The survey also contains three additional sections addressing: 1) alcohol; 2) harassment and discrimination (which is closely linked to the gender climate factor); and 3) sexual assault.⁶¹⁵ The survey is administered by the Academy's Institution Research Division ("Research Division"),⁶¹⁶ with assistance from the Center for Character Development ("the Center") and the Department of

⁶⁰³ Data Spreadsheet, USAFA/XPR, Exhibit 387, at 6.

⁶⁰⁴ Recruited athletes are high school athletes contacted by an Academy coach about the potential of participating in an intercollegiate athletic program.

⁶⁰⁵ Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. Eleven (or 28%) were recruited athletes (24% of all male cadets are recruited athletes); five of the forty-two cadet suspects (or 13%) were varsity athletes (19% of all male cadets are varsity athletes); and nine (or 23%) were graduates of the Academy Preparatory School (20% of all male cadets are graduates of the Prep School). Given the small number of cadet suspects analyzed, these percentage differences do not appear to be significant. *Id.*

⁶⁰⁶ *Id.*

⁶⁰⁷ Data of Sexual Assault Allegations (Cadet Suspects), Exhibit 383, Attachment 7.

⁶⁰⁸ *Id.*

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*

⁶¹¹ *Id.* For a discussion of the disposition of allegations against cadet suspects, see this Report, Section VI.F., Review of Sexual Assault Cases.

⁶¹² Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy*, paper presented at the 105th Annual Convention of the American Psychological Association (August 16, 1997). Exhibit 49, at 11.

⁶¹³ This factor attempts to measure "reverse discrimination."

⁶¹⁴ Summarized Group Discussion of Social Climate Surveys, Exhibit 62, at 1.

⁶¹⁵ *Id.*

⁶¹⁶ The Institutional Research Division is also referred to as "XPR" or "RRER" in reports on the surveys.

Behavioral Sciences and Leadership ("Behavioral Sciences and Leadership"), which includes the Cadet Counseling Center.⁶¹⁷

1. History of the Social Climate Surveys.

The Working Group was unable to locate information on Social Climate Surveys administered in 1991 or 1992.⁶¹⁸ From 1993-1995, the survey was administered each Spring/Summer.⁶¹⁹ During those years, the Research Division published a report after each survey that summarized the results and expressed generalized observations about the meaning of those results.⁶²⁰ The summary report appears to have been discontinued after the 1995 survey.

In 1996, survey administration covering the academic year switched to the Fall.⁶²¹ This led to two surveys in calendar year 1996, a Spring survey covering Academic Year 1995-1996, and a Fall Survey covering Academic Year 1996-1997. The Spring 1996 Survey was administered by the Research Division, and the Center was the office of primary responsibility for both the content and results of the survey.⁶²² This survey appears to have been the first to have included questions on sexual assault.⁶²³ We were unable to locate any results from that survey.

The Fall 1996 Survey included questions prepared by a process action team assessment subcommittee at the request of Lt Gen Stein. The survey was administered by the Center, which was also the office of primary responsibility for the social climate and harassment/discrimination components of the survey. Questions on sexual assault were prepared by the Department of Behavioral Sciences and Leadership. The results of the social climate portion of the survey were co-briefed by the Research Division and the Center.⁶²⁴ The alcohol results were included in a December 1996 briefing proposing a "Cadet Alcohol Program."⁶²⁵ The results of the sexual assault portion of the survey were summarized but do not appear to have been briefed.

The 1997 Survey was once again administered by the Center, with the Center responsible for social climate and harassment questions and results, and the Department of Behavioral Sciences and Leadership responsible for sexual assault questions and results.⁶²⁶ The 1997 questions were the same as those asked in the Fall 1996 Survey.⁶²⁷ The 1997 Survey included several cadet focus groups,⁶²⁸ and comments from both individual respondents and focus groups were compiled and retained. In addition, the Research Division prepared a "factor and reliability analysis" for the six

⁶¹⁷ Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 2.

⁶¹⁸ Moreover, according to leadership from the Research Division, the Center, and Behavioral Sciences and Leadership, much of the "raw data" (i.e., the actual responses provided by cadets) from surveys prior to 1998 no longer exists.

Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 1.

⁶¹⁹ Academy Climate Survey Data, AY 1993-2002, Exhibit 53. The Survey administered in Academic Year 93-94 appears to have been given only to two classes. *Id.*

⁶²⁰ *Id.*

⁶²¹ *Id.* (AY 1996-1997, cover memorandum).

⁶²² *Id.* The Center is also referred to as "CWC" in reports.

⁶²³ Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy*, paper presented at the 105th Annual Convention of the American Psychological Association (August 16, 1997), Exhibit 49, at 11.

⁶²⁴ Academy Climate Survey Data, AY 1993-2002, Exhibit 53. The recipient of the briefing is not identified.

⁶²⁵ *Id.* at AY 1996-1997, Attachment 4.

⁶²⁶ *Id.* at AY 1997-1998, Cover Memorandum.

⁶²⁷ *Id.* at AY 1996-1997, Attachment 1 and AY 1997-1998, Attachment 1.

⁶²⁸ *Id.* at AY 1997-1998, Attachment 4.

climate factors. The sexual assault results were included in a 1998 briefing to Academy Leadership.⁶²⁹

The 1998 Survey was administered by the Center and retained the same functional responsibilities as the 1997 Survey for the areas of Climate Factors, Harassment/Discrimination, and Sexual Assault.⁶³⁰ We were unable to determine whether the alcohol results were provided to anyone. The 1998 Survey included multiple changes to the questions, including fewer social climate questions, additional alcohol questions, and substantive changes to the sexual assault questions. The Climate Factors, which incorporated the Harassment/Discrimination results, were co-briefed by the Center and the Research Division to the Training Group Commander and the Commandant of Cadets.⁶³¹ Sexual Assault and Alcohol results do not appear to have been briefed.

After 1998, survey administration switched back from the Fall to the Spring semester. As a result, no survey was administered in calendar year 1999.⁶³² The functional offices for the 2000, 2001, and 2002 Surveys remained as they had been in 1998, with the Center responsible for the Climate Factors and Harassment/Discrimination and the Cadet Counseling Center responsible for Sexual Assault. As in prior years, there was no indication that the Alcohol results were being provided to or analyzed by anyone. The Cadet Counseling Center substantially rewrote the Sexual Assault questions for the 2002 survey.⁶³³ As discussed below, the Climate Factors and Harassment/Discrimination results were briefed in 2001, but not in 2000 or 2002. Sexual Assault results were not briefed in 2000 or 2001, but results from the 2002 Survey were provided to the Superintendent at his request.⁶³⁴ Alcohol results do not appear to have been briefed in any of these years.

2. Questions Regarding the Validity of Recent Surveys.

Several concerns have been raised over the validity of the administration and results of recent climate surveys.⁶³⁵ (Most witnesses interviewed appear to use the term to indicate whether the survey was “useful” or whether the results were “trustworthy.”) Representatives from the Research Division, the Center, and the Department of Behavioral Sciences and Leadership indicated that the results of the 1998 and 2000 surveys were highly suspect because the low response rate was not representative of the cadet population.⁶³⁶ These representatives questioned the results of the

⁶²⁹ The 1998 briefing is discussed in more detail under the section that follows, which addresses the sexual assault portion of the climate surveys.

⁶³⁰ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1998-1999, Cover Memorandum).

⁶³¹ E-mail from Deputy Director, Center for Character Development to Working Group, April 22, 2003, Exhibit 206.

⁶³² The Academic Year 1998-1999 Survey was nominally administered in late 1998 (although there is anecdotal evidence the survey was administered during the first few days of 1999, the year on the survey is 1998) (Academy Climate Survey Data, AY 1993-2002, Exhibit 53, (AY 1998-1999, Attachment 1)), and the Academic Year 1999-2000 Survey was administered in early 2000.

⁶³³ Academy Climate Survey Data, AY 1993-2002, (AY 2001-2002, cover memorandum), Exhibit 53. The changes in questions make comparisons with prior years’ results problematic.

⁶³⁴ Statement of Director, Cadet Counseling Center, Exhibit 47, at 11-12.

⁶³⁵ See, e.g., Background Paper on USAFA Sexual Assault Program Surveys 1998 to 2003, Exhibit 207 (1998, 2000, 2001, and 2002 survey results were all “considered invalid”); Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 14.

⁶³⁶ Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 2-3.

2001 and 2002 because of incentives given to cadets to complete the surveys during these years and some evidence cadets did not take them seriously.⁶³⁷

In order to assess the degree to which portions of the recent climate surveys might be invalid, scientifically or otherwise, we forwarded the available information pertaining to the administration and analysis of the recent climate surveys to the Air Force Personnel Center (AFPC) for review. The statisticians at the Personnel Center were asked to provide an opinion as to: 1) whether the climate surveys contained information upon which a commander could reasonably rely; 2) whether the sexual assault portion of the survey contained information on which a commander could reasonably rely; and 3) whether each section of the survey was valid.

AFPC critiqued some aspects of the survey and noted apparent problems with survey administration, the wording of some of the questions, and the fact that questions had changed over time.⁶³⁸ However, AFPC did not find the surveys invalid;⁶³⁹ after reviewing and assessing the information on the climate surveys, AFPC concluded that “[t]here is substantial social climate information in the survey raw data that, if properly presented, could benefit a commander.”⁶⁴⁰ The AFPC review noted that the sexual assault portion of the survey contained data “that could reasonably have been of use to a commander if it were appropriately analyzed and presented.”⁶⁴¹

The surveys appeared to be of questionable value to some at the Academy. Representatives from the Research Division, the Center, and the Department of Behavioral Sciences and Leadership expressed concerns over the environment in which the survey was administered and the nature of some of the responses.⁶⁴² One scientist from the Center estimated that between 10-20% of all respondents completed the surveys with “patterned” answers that suggested they had not actually read the questions.⁶⁴³ Another representative from the Center noted that a few of the male respondents indicated the factual impossibility that they had been vaginally penetrated in response to a question on the sexual assault portion of the survey.⁶⁴⁴

The results of the sexual assault portion of the surveys do not appear to have been viewed as credible by the Department of Behavioral Sciences and Leadership. As the current head of the Department explained:

⁶³⁷ *Id.* at 3. In 2001, cadet squadrons with the highest response rate were given pizza parties and other similar rewards. In 2002, cadets were not allowed to leave for Spring Break until they had completed the surveys. One representative of the Center indicated that in his estimation between 10-20% of responses had to be discounted. *Id.*

⁶³⁸ E-mail, AFPC Analysis of USAFA Social Climate Survey Data, Exhibit 208, at 3. AFPC also observed that there was no link between the social climate part of the survey and the sexual assault questions, and recommended that the survey be administered in such a way that the data can be linked “to provide a complete and total picture of the ‘social climate.’”

⁶³⁹ *Id.* at 6. AFPC specifically addressed the low response rates on the 1998 and 2000 Surveys. According to AFPC, the response rates provided an acceptable confidence level of the representation of the cadet population. Experts at the Academy reviewed AFPC’s analysis, and disagreed with some of the conclusions, citing the lack of randomness in the sample.

⁶⁴⁰ *Id.* at 5.

⁶⁴¹ *Id.* at 2.

⁶⁴² Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 3.

⁶⁴³ *Id.* at 3. For example, some respondents simply alternated between “a” and “b” for their answers. *Id.*

⁶⁴⁴ *Id.* at 3.

I received a copy of the most recent data from the Climate Survey [as soon as I arrived at the Academy]...and, I gave them to [the Director of the Cadet Counseling Center] and I [asked him what we did with this]. And, he said, “[W]e’ll use this...to look at our program, get a sense for whether or not people coming into the Academy are coming in with more sexual assault...experience than...after they arrive and things like that.” He later came back to me with a proposal to say, “you know, these data, we don’t do anything...with them....we don’t trust the data.”⁶⁴⁵

According to the Department Head, the Director of the Cadet Counseling Center continued with his recommendation:

He said, “my recommendation is that...we do away with these questions. You know they’re subject to FOIA and, quite frankly, they’re dangerous if they get in the hands of somebody who doesn’t understand the process of how these surveys were conducted and how the survey’s constructed....[Y]ou can kind of cherry-pick what you want to create a story, and that story would be inaccurate.”⁶⁴⁶

The general perception that the Social Climate Surveys were unreliable was echoed by the Superintendent, Lt Gen Dallager. During his interview, Lt Gen Dallager stated that “...the social climate surveys, particularly with regard to the issue [of sexual assault], the feedback that I get is that they’re not considered very valid.”⁶⁴⁷

When asked about this in a group discussion, Academy representatives expressed concerns over the methodology and results of the sexual assault portion of the climate surveys.⁶⁴⁸ Nonetheless, the Dean of Faculty, Brigadier General David A. Wagie, suggested that the results were indicators:

I am familiar with the surveys and I am familiar with why a statistician might consider [them] invalid. But I guess I believe [they are] still indicators of lack of knowledge by cadets or skepticism by cadets of our ability to support them.⁶⁴⁹

Another concern with the Social Climate Survey is that the wording of questions has repeatedly changed over time. Brigadier General Wagie, the Dean of Faculty and former Director of the Center, explained the concern: “And one of the difficulties with the survey is, if you change the questions year to year and try to get more specific, then you don’t have the longitudinal comparison you’d like to make.”⁶⁵⁰ In other words, without consistent questions across years, trend analysis may be difficult or even impossible.

While mindful of the above comments and concerns, we examined the results of the sexual assault portion of the Social Climate Survey.

⁶⁴⁵ Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 19 (This verbatim quote was included in what was otherwise a summarized statement.)

⁶⁴⁶ *Id.* at 19.

⁶⁴⁷ Statement of Lt Gen Dallager, Exhibit 71, at 24.

⁶⁴⁸ Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 2-3.

⁶⁴⁹ Statement of Brig Gen Wagie, Exhibit 198, at 57.

⁶⁵⁰ Statement of Brig Gen Wagie, Exhibit 209, at 5.

3. Sexual Assault Portion of the Social Climate Survey⁶⁵¹

Questions pertaining to sexual assault have been included as part of the survey since 1996.⁶⁵² We located documents containing summarized results of the sexual assault questions from the 1996, 1997, 1998, 2000, 2001, and 2002 Climate Surveys.⁶⁵³ These results are summarized in Table 1 (the number of alleged sexual assaults represented in the 2002 Survey results includes alleged assaults that occurred at the Academy Preparatory School and therefore cannot be directly compared against the results from past years).⁶⁵⁴

See Table on Next Page

⁶⁵¹ The Sexual Harassment and Alcohol Portions of the Surveys are discussed elsewhere in this Report. See this Report, Section IV.A., Gender Climate and Sexual Harassment, and Section IV.D., Alcohol.

⁶⁵² Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy*, paper presented at the 105th Annual Convention of the American Psychological Association (August 16, 1997). Exhibit 49, at 11.

⁶⁵³ See Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1996-1997 at Attachment 4 and AY 1997-1998 at Attachment 3). There is anecdotal evidence that the 1995 survey may have also contained such questions. Statement of Former Chief of Sexual Assault Services, Exhibit 68, at 2. No survey was administered in 1999 or (thus far) in 2003. The January 2003 Sexual Assault Survey was not part of the Social Climate Survey and did not include questions about the occurrence of sexual assault. Sexual Assault Reporting and Treatment Program Survey, Exhibit 210.

⁶⁵⁴ The information provided in this table was prepared with the assistance of statisticians at the Air Force Personnel Center who analyzed the underlying data provided by the Academy. See Exhibit 208, at Tabs A and B. As questions evolved from year-to-year, some surveys contained questions not asked on others. After 1997, surveys permitted a respondent to answer "yes," "no," or "unsure" in response to the question of whether they had been sexually assaulted. Thus, in addition to the "yes" responses indicated in the Table, all questions asked after 1997 received a number of "unsure" responses. The definition of "sexual assault" used in the surveys after 1997 was "any unwanted touching of a sexual nature (fondling, penetration, oral sex, etc.) that is done without a person's consent. Consent is NOT given when there is force, threat of force, coercion, or when the person is alcohol, drug, or mentally impaired, underage, asleep or unconscious."

Table 1 - Sexual Assault Portion of Social Climate Surveys

Social Climate Survey	1996	1997	1998	2000	2001	2002
Number of Surveys Administered Containing Sexual Assault Questions ⁶⁵⁵	1,029	1,318	3,949	3,965	[4,000]	[4,000]
Number of Responses	754	750	576	314	2,060	1,949
Response Rate	79%	57%	15%	8%	51%	48%
Number of Responses (F)	123	125	108	71	365	369
Number of Responses (M)	631	625	468	243	1,695	1,580
“Have you ever been sexually assaulted since you arrived at USAFA?” (F) ⁶⁵⁶	N/A ⁶⁵⁷	19 (15%)	12 (11%)	[9] ⁶⁵⁸ (13%)	69 (19%)	56 (15%)
“Have you ever been sexually assaulted since you arrived at USAFA?” (M) ⁶⁵⁹	N/A	12 (2%)	10 (2%)	[8] ⁶⁶⁰ (2%)	98 ⁶⁶¹ (6%)	24 (2%)
“In the past year..., have you been sexually assaulted?” (F)	11 (9%)	13 (10%)	N/A	N/A	N/A	N/A
“In the past year..., have you been sexually assaulted?” (M)	7 (1%)	10 (2%)	N/A	N/A	N/A	N/A

The questions represented in Table 1 reflect the “top-level” questions pertaining to sexual assault. While the wording of the question (“Have you ever been sexually assaulted since you

⁶⁵⁵ Bracketed numbers are estimates.

⁶⁵⁶ The threshold sexual assault question asked on the 1997 and 2002 Surveys varied slightly. The 1997 Survey asked “Have you ever been sexually assaulted since you started attending USAFA?” The 2002 Survey asked “Have you ever been sexually assaulted while a cadet (or USAFA Preparatory School student) while at USAFA?”

⁶⁵⁷ N/A indicates the information was not applicable because the question was not asked in the survey.

⁶⁵⁸ Bracketed number is an estimate. The 2000 Survey computer program failed to capture the gender breakdown on the sexual assault portion of the survey. See e-mail, analysis of USAFA social climate survey data, Exhibit 208 at 3. For purposes of this table, 52% (the average percentage of females indicating they had been the victims of sexual assault in other years) of these respondents were assumed to be female. This translates to 9 (52% of 17) female victims in 2000.

⁶⁵⁹ The threshold sexual assault question asked on the 1997 and 2002 Surveys varied slightly. The 1997 Survey asked “Have you ever been sexually assaulted since you started attending USAFA?” The 2002 Survey asked “Have you ever been sexually assaulted while a cadet (or USAFA Preparatory School student) while at USAFA?”

⁶⁶⁰ Bracketed number is an estimate. The estimated number of males was derived by subtracting the estimated number of female responses from the total number of affirmative responses.

⁶⁶¹ This number (and the percentage of male cadets it represents) is grossly disproportionate with numbers from other years. As discussed earlier, some of the responses in this year included males indicating they had been vaginally penetrated, which suggests that some responses are not accurate. Moreover, the fact that the *percentage* of male cadets indicating they had been victims of sexual assault returned in 2002 to the same level as past years, suggests that the 2001 number is not an accurate representation. However, consideration should be given to the possibility that some portion of these responses reflected an actual increase in the number of male victims.

arrived at USAFA” or some variant of those words) excludes assaults that occurred prior to a cadet’s arrival at the Academy, the question encompasses acts falling outside of the Academy’s control (e.g., those occurring during Spring Break or otherwise unrelated to the Academy).⁶⁶² Affirmative answers to these questions led to a number of other more specific questions. The answers to these more specific follow-on questions suggest that some assaults reported in the surveys took place away from the Academy or were committed by non-cadets.⁶⁶³ Moreover, the definition of “sexual assault” used in these surveys was a variant of the Academy’s definition, and thus may encompass some acts that would not normally be considered criminal. Nonetheless, Table 1 provides at least one indicator from the sexual assault portion of the climate survey, that between 11-19% of female cadets responding to the survey over the last five years expressed that they had been sexually assaulted while at the Academy.⁶⁶⁴

⁶⁶² As noted above, the 2002 survey also explicitly included sexual assaults against an individual while a USAFA Preparatory School student.

⁶⁶³ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2000-2001, Attachment 4; AY 2001-2002, Attachment 4).

⁶⁶⁴ We prepared the table, as there was no evidence of any existing trend analysis.

IV. Factors Related to the Deterrence and Occurrence of Sexual Assault

This portion of the Report addresses factors that appear to be related to sexual assault at the Academy, beyond those already discussed in the context of specific programs.

A. Gender Climate and Sexual Harassment

Social climate surveys and interviews indicate that the gender climate at the Academy is one in which instances of negative comments and sexual harassment⁶⁶⁵ based on gender of some female cadets have existed despite programs to eliminate them and this climate may, in certain circumstances, contribute to the incidence of sexual assault.

Since the 1991-1992 academic year, the Academy has administered Social Climate Surveys.⁶⁶⁶ In recent years, the surveys have included questions pertaining to gender climate and sexual harassment.⁶⁶⁷ The Social Climate Surveys were not administered every year and there are questions regarding their reliability.⁶⁶⁸ Still, the information provides an indication of the Academy climate as it relates to female cadets. Results from the 1998 survey indicate that, of responding female cadets, 41% reported being sexually harassed by other cadets (and 0.3% by faculty or staff⁶⁶⁹), 63% reported derogatory comments from other cadets on the basis of gender (and 3% from faculty or staff), and 57% felt discriminated against by other cadets on the basis of gender (and 13%

⁶⁶⁵ The Air Force defines sexual harassment, per Air Force Instruction 36-2706, Attachment 1, as follows:

A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

Submission of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career or

Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment. This definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. ("Workplace" is an expansive term for military members and may include conduct on or off duty, 24 hours a day.) Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

The Air Force definition is substantially the same as the DoD definition of sexual harassment found at DoD Directive 1350.2.

⁶⁶⁶ Connie J. Johnmeyer, *The Road to "Zero Tolerance" and Beyond: A History of Sexual Assault Services at the United States Air Force Academy*, paper presented at the 105th Annual Convention of the American Psychological Association (August 16, 1997) Exhibit 49, at 11. Academy Climate Survey Data, AY 1993-2002, Exhibit 53.

⁶⁶⁷ Academy Climate Survey Data, AY 1993-2002, Exhibit 53.

⁶⁶⁸ See this Report, Section III.I., Social Climate Surveys.

⁶⁶⁹ "Staff" includes AOCs, MTLs, and coaches.

by faculty or staff).⁶⁷⁰ The raw data from the 2000 survey was never compiled into a useful format or briefed to senior leadership because the Center for Character Development considered the response rate to that survey to be too low to be meaningful.⁶⁷¹ However, the 2000 survey results showed that of responding female cadets, 42% reported being sexually harassed by other cadets (and 0.3% by faculty or staff), 81% reported derogatory comments from other cadets on the basis of gender (and 7% from faculty or staff), and 66% felt discriminated against by other cadets based on gender (and 13% by faculty and staff).⁶⁷² The 2001 survey results showed that of responding female cadets, 47% reported being sexually harassed by other cadets (and 2% by faculty and between 0-2% by staff), 68% reported derogatory comments from other cadets on the basis of gender (and 13% by faculty, and 3-6% by staff), and 66% felt discriminated against by other cadets based on gender (and 20% by faculty and between 8-18% by staff).⁶⁷³ The 2002 survey indicated that of female cadets who responded, 36% reported being sexually harassed by other cadets (and 3% by faculty and between 0-2% by staff), 63% reported derogatory comments from other cadets on the basis of gender (and 10% by faculty and between 2-5% by staff), and 57% felt discriminated against by other cadets on the basis of gender (and 15% by faculty and between 7-17% by staff).⁶⁷⁴ Comments derived from the 2003 Sexual Assault Reporting and Treatment Program Survey also indicate sexual harassment of female cadets is a concern of some cadets.⁶⁷⁵

Recent survey results also suggest a fear of reprisal among female cadets for reporting sexual harassment. Results from the 1998 survey indicate that, of responding female cadets, 75% indicated a fear of reprisal from other cadets for reporting sexual harassment, 39% feared reprisal from AOCs, 34% feared reprisal from MTLs, 29% feared reprisal from coaches, and 25% feared reprisal from faculty.⁶⁷⁶ Results from the 2000 survey indicate that, of responding female cadets, 76% indicated a fear of reprisal from other cadets for reporting sexual harassment, 44% feared reprisal from AOCs, 37% feared reprisal from MTLs, 26% feared reprisal from coaches, and 40% feared reprisal from faculty.⁶⁷⁷ The 2001 survey results indicated that 75% of female cadets

⁶⁷⁰ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1998-1999, attachment 2, at 12-13). The briefing provided a number of conclusions including that the survey showed a “strong concerns about harassment.” The briefing offered two recommendations for improving gender issues: 1) encouraging faculty and staff to share with cadets their perspectives regarding gender issues; and 2) enriching human relations lessons to highlight the negative and false perceptions about female cadets. The briefing indicated that the Dean of Faculty and Training Wing were the offices of primary responsibility for implementing the first recommendation, and the Center for Character Development was responsible for implementing the second recommendation. *Id.* at 26.

⁶⁷¹ E-mail from Deputy Director, Center for Character Development to Working Group, April 22, 2003, Exhibit 206. The 2000 survey results were not summarized contemporaneously by anyone at the Academy in 2000. At the request of the Working Group, the Academy’s Institutional Research Division examined the individual responses and summarized the results during our investigation.

⁶⁷² Hypothetical Briefing, Prepared by USAFA/XPR (May 2003), Exhibit 211.

⁶⁷³ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2000-2001, attachment 2, at 14-17).

⁶⁷⁴ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, attachment 2, at 13-16). The 2002 briefing did not contain conclusions and recommendations as in past briefings, but we note that although responses remained at significant levels in each category, they reflected some improvement. However, according to the individual who prepared the briefing, the briefing was never presented to anyone because the Center for Character Development decided the results were not useful or reliable. Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 212, at 30-31, 36-37.

⁶⁷⁵ Cadet Written Comments, Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 2 (cadet tired of being looked down on or hearing sexual comments about her because she is a female.); at 26 (cadet reports sexual harassment is prevalent); at 36 (cadets say nothing when “sexist or sexual jokes” are made); at 45 (obscenities shouted at the female guest of a male cadet).

⁶⁷⁶ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1998-1999, Attachment 2, at 16).

⁶⁷⁷ Hypothetical Briefing, Prepared by the Academy’s Institutional Research Division (May 2003), Exhibit 211. The 2000 survey results were not summarized contemporaneously by anyone at the Academy in 2000. At the request of the

responding feared reprisal from other cadets for reporting sexual harassment, 50% feared reprisal from AOCs, 42% from MTLs, 42% from coaches, and 45% from faculty.⁶⁷⁸ The 2002 results showed slightly lower percentages of female cadets who feared reprisal for reporting sexual harassment: 63% feared reprisal from other cadets, 48% from AOCs, 36% from MTLs, 36% from coaches, and 41% from faculty.⁶⁷⁹

Sexual harassment at the Academy was also seen in the interviews with cadets, professors, and Academy leadership.⁶⁸⁰ These interviews indicate that frequent offensive, gender-based comments are directed at female cadets.⁶⁸¹ The current Dean of Faculty perceives that in some cadet squadrons there tends to be accepted crude behavior, and an expectation that cadet women will put up with it to be accepted.⁶⁸² One female cadet described these comments as making her feel uncomfortable,⁶⁸³ and another said they made her feel unwelcome.⁶⁸⁴ A former cadet expressed concern about being treated differently by instructors.⁶⁸⁵ The current head of the Department of Behavioral Sciences and Leadership at the Academy believes there is a relationship between sexual harassment and sexual assault.⁶⁸⁶ (Others with whom the Working Group consulted questioned such a correlation.) At least one recent study concludes that there is a higher incidence of rape of female military members of all services where a ranking officer or immediate supervisor allowed sexually demeaning comments and gestures toward women in the workplace.⁶⁸⁷

Working Group, the Academy's Institutional Research Division examined the individual responses and summarized the results during our investigation.

⁶⁷⁸ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2000-2001, Attachment 2, at 23).

⁶⁷⁹ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, Attachment 2, at 22).

⁶⁸⁰ Incidents of sexual harassment at the Academy may be reported on a Form 27, which is used to document a range of inter-personal complaints. Information from the Form 27s is summarized and used to create a Human Relations Climate Report. This report is forwarded to the Commandant, Training Group Commander, and the Vice-Commandant. Statement, Former Director, Center for Character Development, Exhibit 72, at 18. The staff team reviewed the available monthly reports between January 2001 and March 2003 and found they cover, for the most part, relatively minor and isolated events.

⁶⁸¹ Memorandum for Record, Interview with Cadet Counseling Center Personnel, Exhibit 154 (reporting that sexual harassment happens daily in the Cadet Wing; comments such as "nice ass"; "your ass is getting fat"); Memorandum for Record, Interview with First-Class cadet, Exhibit 134; Memorandum for Record, Group Interview with Cadet Wing Leaders, Exhibit 25; Memorandum for Record, Interview with Faculty Member, Exhibit 28 (stating he is aware of significant anecdotal evidence suggesting a hostile sexual climate toward women); Memorandum for Record, Group Interview with Female Cadets, Exhibit 56; Memorandum for Record, Interview with Third-Class cadet, Exhibit 57 (female cadet told by upperclassman "girls don't belong here"); Memorandum for Record, Interview with Second-Class cadet, Exhibit 138 (female told by upperclass female cadet she should get used to people talking about her body); Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24 (comments such as "hey, redhead, nice ass" commonplace); statement, First-Class cadet, Exhibit 41 (males referring to each other as "pussy"); Statement, TSgt, Female Military Training Leader, Exhibit 31 (cadets sending inappropriate e-mail with sexual references).

⁶⁸² Statement of Brig Gen Wagie, Exhibit 198, at 71.

⁶⁸³ Cadet Written Comments, Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 21 (describing unwanted touching meant in a "playful" manner but still very uncomfortable).

⁶⁸⁴ Statement of Anonymous Former Cadet, Exhibit 391 (a female graduate, interviewed in approximately 1993-94, stated that she was told by upperclass male cadets that women don't belong at the Academy and hindered the mission of the Air Force. One upperclass male called her a "stupid bitch." She was subjected to comments about her physical appearance including being told that she was ugly and overweight, despite her status as an accomplished athlete).

⁶⁸⁵ Statement of Anonymous Former Cadet, Exhibit 391, at 5-6 (male faculty member commenting they were changing their teaching style because there were women in the class and flirting with cadets).

⁶⁸⁶ Statement, Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 9 (believes sexual harassment is "a foot in the door toward assault").

⁶⁸⁷ Anne G. Sadler, *Factors Associated with Women's Risk of Rape in the Military Environment*, American Journal of Industrial Medicine, Vol. 43, Issue 3, 2003, pp. 262 - 273 (purpose of study to identify workplace factors associated with rape occurring during military service) Exhibit 213.

Academy leadership interviews showed a range of perspectives regarding the gender climate. Lieutenant General Hosmer, Superintendent of the Academy between 1991 and 1994, was aware of harassment issues from female cadets he interviewed following a sexual assault in 1993 and knew that women found sexual references troublesome. He was also aware of a 1993 GAO review regarding gender issues.⁶⁸⁸ In 1993, Lt Gen Oelstrom, then Superintendent of the Academy, believed women were making remarkable progress toward integration into the Academy and perceived few pervasive gender climate issues.⁶⁸⁹ At the same time, he was aware that a certain percentage of female cadets were concerned with issues of sexual harassment and sexual assault.⁶⁹⁰ Brigadier General Welsh, Commandant from June 1999 to August 2001, felt that there was an undertone of harassment which exhibited itself in the form of what the male cadets believed were humorous comments.⁶⁹¹ However, Lt Gen Dallager, Superintendent of the Academy, Summer 2000 through April 2003, found that the atmosphere of sexual harassment was more pervasive than any other Air Force organization in which he had served.⁶⁹² Brigadier General Gilbert, Commandant, August 2001 to April 2003, became aware of certain sexual harassment issues after receiving information from the Center for Character Development on the percentage of cadets who believed derogatory comments and jokes were aimed at them based on gender. This resulted in his making changes to the Human Relations Education Officer (HREO) program, to address gender climate concerns, and to deal with instances of sexual harassment.⁶⁹³ While the Social Climate Surveys pointed to the existence of sexual harassment, the surveys were not always briefed to senior leadership. Several Superintendents and other Academy leaders gauged the issue through individual contact with women cadets.⁶⁹⁴

The available information indicates that sexual harassment remains problematic; but, its true extent and nature cannot be ascertained in the absence of survey instruments that provide reliable information over time.

B. Cadet Authority

The military training environment, combined with the subordinate position of Fourth-Class cadets, can make those cadets more vulnerable to sexual assault.

1. Basic Cadet Training

An Academy cadet begins training by attending Basic Cadet Training (BCT), which is split into two phases: BCT 1 and BCT 2. BCT may be the basic cadet's first experience with military

⁶⁸⁸ Statement of Lt Gen Hosmer, Exhibit 45, at 6-8.

⁶⁸⁹ Lt Gen Oelstrom did not recall any communications highlighting that sexual harassment was or should be an area of concern. Statement of Lt Gen Oelstrom, Exhibit 63, at 20.

⁶⁹⁰ Statement of Lt Gen Oelstrom, Exhibit 63, at 12-13.

⁶⁹¹ "[T]here was an atmosphere of not much hesitance to make a smart-alec [sic] remark about a female in the cadet wing." Statement of Brig Gen Welsh, Exhibit 64, at 18. On the twentieth anniversary of the first graduating class with women, Brig Gen Welsh requested a status report of women at the Academy. A panel of cadets and graduates, convened as part of the information gathering effort, indicated gender-based name-calling was a concern. As a result, Brig Gen Welsh directed the Center for Character Development to address this issue in their lessons. *Id.* at 21.

⁶⁹² Statement of Lt Gen Dallager, Exhibit 71, at 46.

⁶⁹³ Statement of Brig Gen Gilbert, Exhibit 10, at 42-43.

⁶⁹⁴ Statement of Lt Gen Oelstrom, Exhibit 63, at 11. Statement of Brig Gen Welsh, Exhibit 64, at 16, (A comment in which a female cadet was referred to as a "cadet girl" led Brig Gen Welsh to investigate training received by cadets.); Statement of Lt Gen Dallager, Exhibit 71, at 47.

life. BCT 1 is largely academic and is held in Vandenberg Hall on the Academy proper, where the basic cadets “in-process” and receive informational briefings including military topics such as customs, courtesies and marching.⁶⁹⁵ Basic cadets also begin physical conditioning training in preparation for the rigors of BCT 2. BCT 2 takes place at Jack’s Valley, a wooded area on the Academy grounds located five miles from the main Academy buildings. During BCT 2, the emphasis is on physical training, small unit tactics and field training.⁶⁹⁶

During the five weeks of BCT,⁶⁹⁷ cadet candidates are overwhelmed with information, material, and demands on their time.⁶⁹⁸ In theory, every moment of a cadet’s time is accounted for.⁶⁹⁹ Cadets are assigned to co-ed squadrons that remain constant throughout BCT 1 and 2, though the locations and the leadership for those squadrons change between the two phases.⁷⁰⁰ The policy of having BCT female cadet rooms interspersed among BCT male cadet rooms has now been superseded, however, by the *Agenda for Change*, which directs separate billeting arrangements for female and male cadets upon entering BCT. During the academic year, all Fourth-Class cadets, male and female, are to be billeted with their assigned squadrons, with female cadet rooms clustered together near the women’s bathrooms.⁷⁰¹

During both BCT 1 and BCT 2, the basic cadets are trained by upperclass cadets, known as the cadre. The cadre is supervised by one Air Officer Commanding (AOC) and one Military Training Leader (MTL),⁷⁰² plus one associate AOC and one associate MTL, per squadron of approximately 120 basic cadets.⁷⁰³

Cadets are taught the cadet leadership chain and the importance of obedience to superiors. They are also briefed on the Basic Cadets’ Bill of Rights, a document that informs all basic cadets of their right to be free of: touching, swearing, inappropriate sexual advances, requests for sexual favors and other verbal or physical abuse of a sexual nature. This Bill of Rights is briefed to cadets early in the BCT program and is also given to each basic cadet in a manual called “*Wing Tips, Basic Cadet Training*.”⁷⁰⁴ Cadets and permanent party leadership interviewed acknowledged that basic cadets might not assimilate this information among the flood of other material received.⁷⁰⁵ The *Agenda for Change* seeks to increase awareness of basic cadets’ rights by requiring increased emphasis on fair treatment and mutual respect, and by specifically requiring cadets be provided substantial material on sexual assault prevention and the overall behavior expected of cadets.⁷⁰⁶

⁶⁹⁵ UNITED STATES AIR FORCE ACADEMY CATALOG, at 24-25, (2002-2003 ed.) Exhibit 6.

⁶⁹⁶ *Id.* at 167.

⁶⁹⁷ *Id.*

⁶⁹⁸ Statement of TSgt, Military Training Leader, Exhibit 31, at 3.

⁶⁹⁹ Statement of Col Slavec, Exhibit 23, at 171. *But see also* same statement relating that on one occasion “the football team [came] up and [took] the freshman football players outside of training at night and nobody knew any better....”) *Id.* at 23-24.

⁷⁰⁰ Statement of Deputy Group AOC, Exhibit 105.

⁷⁰¹ *Agenda for Change*, Exhibit 4.

⁷⁰² For a description of these permanent party members, *see* this Report, Section IV.G., Experience and Qualifications of AOCs and MTLs.

⁷⁰³ Statement of Deputy Group AOC, Exhibit 105, at 1.

⁷⁰⁴ *Id.* at 3.

⁷⁰⁵ Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 37; Statement of Female Second-Class cadet, Exhibit 109; Statement of Female Military Training Leader, Exhibit 31.

⁷⁰⁶ *Agenda for Change*, Exhibit 4.

BCT cadre instructors are upcoming first and Second-Class cadets (juniors and seniors). They receive a week of training (“prep week”) in preparation for their leadership of the Basic Cadet Training squadron, where they receive briefings on how to run the training, resources available to them, safety issues, and motivational techniques. The Cadet Counseling Center provides an extensive briefing on “Support of BCT” which provides typical reactions experienced in BCT (shock and distress, confusion, lowered self-esteem), typical problems (including homesickness, stress, and self-doubt) and special concerns. One such concern highlighted is sexual assault prior to entering the Academy. Cadre members are trained on what symptoms to watch for, and given information about the Cadet Counseling Center. Additional members of cadre, typically upcoming Second-Class cadets, are also given specialized training as “Flight Specialists.” These cadets are essentially the first line of contact with basic cadets who encounter problems and are trained to recognize potential problems, provide on the spot counseling when appropriate, and to refer cadets to the Cadet Counseling Center.⁷⁰⁷

All members of the cadet cadre and permanent party trainers at BCT receive a briefing on sexual harassment, with the specific objective of conducting appropriate training in BCT. The briefing includes a definition of sexual harassment, as well as four case studies for discussion. Cadre training also includes a discussion of the Rules of Engagement for training, which consists of a one page handout that essentially summarizes the Basic Cadets’ Rights, a reiteration of the definition of sexual harassment, discussion of prohibited training times, the limits of physical training and the consequences of refusal to be trained.⁷⁰⁸ All of these are essentially extracts of guidance found in Training Wing guidance on these topics.

The training provided by the cadre is designed to test the basic cadets under various stressors, including intimidation, fatigue, deliberate over tasking and a strange environment. Cadets are trained to obey the orders of their superiors. In a deliberate attempt to stress the cadets, orders are barked out at the cadets, “in their face,” i.e., at loud volume and at very close range.⁷⁰⁹ The cadre keeps the training at a rigorous pace.

Cadets are asked to run, do pushups, and march, sometimes to the edge of their physical limits.⁷¹⁰ During this training, the cadre may be shouting at the cadet to encourage the cadet to use all his or her available energy.⁷¹¹ These are stress-inducing techniques, and these practices are designed to teach cadets to cope with such stressors.⁷¹² They also serve to test the mettle of the cadets, and to weed out those cadets whose commitment to service may not be at the level desired by the Air Force; the drop-out rate for basic cadets over the past five years has ranged from 4.7% to 7.3% per session.⁷¹³ The manner of conducting these activities has been questioned over time, with particular efforts under Lt Gen Oelstrom (Superintendent at the Academy from 1997 to 2000) to make them more moderate.⁷¹⁴

⁷⁰⁷ 2002 Basic Cadet Training Materials, Exhibit 214, at 2.

⁷⁰⁸ *Id.*

⁷⁰⁹ Statement of Deputy Group AOC, Exhibit 105, at 4.

⁷¹⁰ *Id.*

⁷¹¹ For pictures of upperclassmen performing so-called “high-volume correction,” see the Newspaper Article, Re; Recognition, Exhibit 215.

⁷¹² Statement of Chief of Character and Leadership Education, Center for Character Development, Exhibit 204, at 5. (fourth-class system creates so much pressure it teaches cadets to cope).

⁷¹³ E-mail, Re: Academy Statistical Data, from USAFA/XPR to Working Group, April 10, 2003, Exhibit 227, regarding BCT losses for Classes 2002-2006.

⁷¹⁴ Statement of Lt Gen Oelstrom, Exhibit 63, at 43.

From the moment they arrive as trainees, basic cadets are taught that loyalty to fellow cadets is paramount. Cadets survive as a group, and consequently they fear pulling the group down by failing to do the required training. In return, one cadet has stated, particularly in BCT, “your friends are everything” and provide a source of support for each other.⁷¹⁵

In the case of the cadre-run BCT, there is the potential for the cadre to abuse the power they hold as primary trainers. There is anecdotal evidence that some cadre members engage in inappropriate methods of training the basic cadets. The Deputy Commandant of BCT stated that examples of some training violations last BCT session included: a cadet instructor hefting a baseball bat with the words “BASIC KILLER” written on it in front of the cadets, and a male cadre instructor making a female basic cadet get down on her knees in front of him and perform “bracing” maneuvers (where the chin is tucked in towards the neck). Both of these violations were reported and corrective action was taken.⁷¹⁶ The Deputy Commandant of BCT acknowledged that the limited number of AOCs and MTLs cannot supervise all the cadre training as the squadrons may be spread out over Jack’s Valley, and they can only punish those offenses reported to them.⁷¹⁷

The remote location of Jack’s Valley and the limited security available⁷¹⁸ could increase the potential for sexual assault to take place. One female basic cadet reported being asked by an upperclass cadre member to meet him at night away from the tent area. She stated that she believed she had to comply, and has alleged she was subsequently raped by the cadre member. This case is still on-going.⁷¹⁹ Another basic cadet reported being taken out of her tent at night by three male upperclass cadre members who took her into the woods, where she was allegedly raped by two of them. She was not able to identify her assailants.⁷²⁰ A female chaplain who provided chaplain services to basic cadets during BCT stated that three female victims approached her over the course of BCT to report they were victims of sexual assault, and that she was not aware of any of them reporting it to anyone else.⁷²¹

The *Agenda for Change* addresses concerns regarding the potential abuse of vulnerable basic cadets during BCT by upperclass cadre trainers. Beginning in the summer of 2003, the BCT program will be augmented to emphasize fair treatment and mutual respect, providing substantial material on sexual assault prevention and overall behavior expected of cadets, as well as guidelines on workplace behavior, demeanor and consequences.⁷²² This initiative ensures that only First-Class cadets or Second-Class cadets will interact with Fourth-Class cadets during BCT. During the first half of the fall semester, only First-Class cadets will discipline Fourth-Class cadets, while after Thanksgiving, selected Second-Class cadets will train the Fourth-Class cadets. The opportunity for Third-Class cadets to train Fourth-Class cadets will be limited to academic mentoring, tutoring or

⁷¹⁵ Statement of Male Fourth-Class cadet, Exhibit 216, at 1.

⁷¹⁶ Statement of Male Deputy Group AOC, Exhibit 105, at 3.

⁷¹⁷ *Id.*

⁷¹⁸ The basic cadets sleep in a tent city they erect themselves. UNITED STATES AIR FORCE ACADEMY CATALOG, at 167 (2002-2003 ed.) Exhibit 6.

⁷¹⁹ Air Force Form 1168, Witness Statement of Female Cadet, Sept. 19, 2002, Exhibit 217.

⁷²⁰ AFOSI Case Summary, Exhibit 58, at 67.

⁷²¹ Statement of Chaplain, 10th Air Base Wing, Exhibit 30, at 3. Chaplains have confidentiality and are not obligated to report the assault to command; for this reason, this chaplain believes, cadets feel more secure in reporting to her.

⁷²² *Agenda for Change*, Exhibit 4.

on-the-spot corrections, and any discipline administered by a Third-Class cadet towards a Fourth-Class cadet will have the oversight of a First-Class cadet.⁷²³

2. Fourth-Class cadets in the Cadet Wing Structure and the Fourth-Class System

Cadets entering the Academy are organized in two hierarchical systems: the Cadet Wing and the so-called four-class system.

The Cadet Wing is designed to mirror the positions found within an active duty Air Force wing.⁷²⁴ First-Class cadets (seniors) are given cadet officer positions, while Second-Class cadets (juniors) have cadet NCO positions and Third-Class cadets (sophomores) fill billets that would be assigned to airmen.⁷²⁵ The Fourth-Class cadets are subordinate to all the ranks and must obey the orders of any upperclass cadet.⁷²⁶ The theory behind this “leadership laboratory” is that the cadets will lead, govern and discipline themselves by aligning themselves within the organizational structure of the Cadet Wing. They are assisted in doing so by a permanent party AOCs and MTLs assigned to each squadron, and by active-duty mentors who are encouraged to “follow” the cadets as they run the wing.⁷²⁷

In addition to forming part of the Cadet Wing, cadets also have a place in the fourth-class system by virtue of their class year. Under the fourth-class system, Fourth-Class cadets are in a special status from the summer they enter Basic Cadet Training until early spring the following year when they are “recognized.” During that time, Fourth-Class cadets are called “doolies”⁷²⁸ and are counseled, corrected and disciplined by the upperclass cadets of the other three class years.⁷²⁹ Fourth-Class cadets are restricted as to where they may go in the Academy, how they must walk (at double-time along the marble strips of the terrazzo), and what luxury items they may possess. Fourth-Class cadets are the most severely restricted and have the fewest privileges.⁷³⁰ Of all the year groups, the most pressure is placed on Fourth-Class cadets.

Interviews with faculty, AOCs and cadets indicated that female Fourth-Class cadets are vulnerable to the attentions of upperclass male cadets, who may use their status and position in the fourth-class system to pressure Fourth-Class cadets into dating or meeting with them.⁷³¹ Cadets report that female Fourth-Class cadets will receive e-mail messages, or Instant Messages, from upperclass male cadets who have spotted them at the Academy, asking them if they want to meet.⁷³² Even though this is considered fraternization, prohibited under Cadet Wing Instruction 51-201, a

⁷²³ *Id.*

⁷²⁴ “Wing” is the name of the organizational structure at most Air Force Installations.

⁷²⁵ Statement of Squadron AOC, Exhibit 34; and see, generally, AF Cadet Wing Instruction 38-101, Chapter 2.

⁷²⁶ AF Cadet Wing Instruction 38-101, ¶ 2.5. This has been changed by the *Agenda for Change*, Exhibit 4.

⁷²⁷ AF Cadet Wing Instruction 38-101, ¶ 1.14.

⁷²⁸ From the Greek *duolos*, meaning “subject,” UNITED STATES AIR FORCE ACADEMY CATALOG, at 168, (2002-2003 ed.) Exhibit 6.

⁷²⁹ This practice will no longer in effect due to implementation of the *Agenda for Change*. As noted above, only First- and Second-Class cadets will be able to discipline and train Fourth-Class cadets.

⁷³⁰ AF Cadet Wing Instruction 36-3001, ¶ 4.6.

⁷³¹ Statement of Female Fourth-Class cadet, Exhibit 200, at 2; Statement of Captain, Faculty Member, Exhibit 26, at 3; Statement of Male MTL, Exhibit 133, at 3.

⁷³² Statement of Female Third-Class cadet, Exhibit 57, at 2.

female Fourth-Class cadet may feel she has no choice but to agree to meet with the upperclass cadet.⁷³³

Interviews also revealed instances of male upperclass cadets walking into female Fourth-Class cadets' rooms unannounced and uninvited. One female Fourth-Class cadet stated that an upperclass cadet kept on walking into her room when she returned from the shower, and she had to stand in her underwear and talk to him.⁷³⁴ Another female cadet reported that when she was a Fourth-Class cadet, she was woken up at two-thirty in the morning by a male First-Class cadet who was drunk, and decided he wanted to see her. She stated she was scared by this incident.⁷³⁵ A male First-Class cadet squadron commander acknowledges instances on multiple occasions of upperclass males entering the rooms of lower class female cadets uninvited at night.⁷³⁶ Lieutenant General Hosmer, Superintendent of the Academy from 1991 to 1994, also described anecdotal incidents of which he was aware, typically, of cases in which a female cadet would wake up in her room and find a male cadet standing there, or a male cadet with his hand on her leg, or her breast, in the middle of the night.⁷³⁷

The power exercised by upperclass male cadets over more junior female cadets to coerce a sexual relationship is a factor in several reported cases. In one case a male upperclass cadet offered to store prohibited items such as CDs for a female Fourth-Class cadet (items she was not allowed to possess as a Fourth-Class cadet) in his room. She claimed that he later initiated an abusive sexual relationship, and a factor in her continuing the relationship was the power he held over her both as a First-Class cadet and as someone who knew she possessed "contraband."⁷³⁸ Lieutenant General Dallager described this power as the ability to "leverage," stating, "...[a] Fourth-Class cadet has something they're not supposed to have, so a benevolent upperclassperson says hey, I'll take care of that for you. If someone chooses to leverage that, they can apply coercion."⁷³⁹ In another case, a Fourth-Class cadet was approached via Instant Message by a First-Class cadet she did not know. She later became aware that he was the Officer in Charge (OIC) of the Flying Club, and he offered her opportunities to fly that she would not normally have had as a Fourth-Class cadet. She stated that this was the beginning of a sexual relationship that she did not welcome and which she ultimately reported.⁷⁴⁰

Some cadets and leaders believe that male First-Class cadets use the amnesty system to convince more junior female cadets they can engage in fraternization or other offenses such as drinking or leaving the Academy with them and that they will be protected.⁷⁴¹ A focus group of male Fourth-Class cadets observed that in their opinion, upperclass males have the ability to

⁷³³ Statement of Female Fourth-Class cadet, Exhibit 200, at 2 (stating that her roommate received an instant message from an upperclassman asking her to go to his room to clean his closet and she advised her roommate not to go, but there is a female in her squadron who would be afraid not to go); Statement of Female Third-Class cadet, Exhibit 57, at 2; However, a different perspective is voiced by some upperclass females, Memorandum for Record, Group Interview with Female Cadets, Exhibit 218, at 1 (four-degrees are infatuated with 1st degree cadets).

⁷³⁴ Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24, at 1.

⁷³⁵ Statement of Female Second-Class cadet, Exhibit 109, at 3-4.

⁷³⁶ Statement of Male First-Class cadet, Exhibit 390, at 2.

⁷³⁷ Statement of Lt Gen Hosmer, Exhibit 45, at 14, 24.

⁷³⁸ AFOSI Report of Investigation, AF Form 1168, Witness Statement of Female Third-Class cadet, Exhibit 163.

⁷³⁹ Statement of Lt Gen Dallager, Exhibit 71, at 93-94.

⁷⁴⁰ AFOSI Report of Investigation, AF Form 1168, Witness Statement of Female Fourth-Class cadet, Exhibit 191.

⁷⁴¹ See this Report, Section III.E., Amnesty for Infractions.

blackmail the female Fourth-Class cadets, by taking them to drink and then telling them they can get punished for these offenses.⁷⁴²

There are certain factors that may protect a female cadet from being singled out either as a romantic interest or as a target for harassment. These factors include having a strong support system, being an intercollegiate athlete, and being physically or mentally strong, i.e. not showing weakness.⁷⁴³ Two female cadets interviewed stated that in their opinion, female athletes were less likely to be the target of a sexual assault, because cadets respect strength, intelligence and ability.⁷⁴⁴ In particular, female athletes appear to have more resources available to them that make them less isolated: they are with their team more, they are physically out of the squadron and away from the Academy more, and they have a built-in support structure.⁷⁴⁵ Of forty-three investigated allegations of sexual assault involving female cadet victims, five (or 12%) of the victims were intercollegiate athletes, although 34% of all female cadets are varsity athletes.⁷⁴⁶ Cadets and AOCs agree that assertiveness training might supply all female cadets with the tools they need to protect themselves from sexual assault and victimization. No such training is presently offered, but “Assertiveness Assessments” are planned for female Fourth-Class cadets at the end of 2003 Basic Cadet Training by the Sexual Assault Services Committee, which hypothesizes that the emphasis on compliance in BCT may cause a reduced level of assertiveness in female Fourth-Class cadets. If the planned assessment (to be done at intervals throughout the fourth-class year) confirms this hypothesis, the Sexual Assault Services Committee proposes an Assertiveness Skills 101 class for female Fourth-Class cadets.⁷⁴⁷

Senior leaders have recognized the potential for abuse inherent within the fourth-class system. Lieutenant General Hosmer, former Superintendent, stated that the “typical” case involved abuse of command authority by an upperclassman on a vulnerable Fourth-Class female cadet.⁷⁴⁸ Brigadier General Gilbert, immediate past Commandant, also recognized that in any hierarchical structure, there is the potential for abuse, and that in his opinion oversight by the AOCs, MTLs and cadet chain of command served as safeguards to mitigate the risk of abuse.⁷⁴⁹ Brigadier General Welsh, his predecessor, saw the same potential for abuse, noting his view that sexual assault is about power, and that abuse of power can translate into assault.⁷⁵⁰ Despite the recognized risks, (then) Brig Gen Lorenz, Commandant from 1996 to 1999, viewed the fourth-class system as being an effective and thorough training model for officership, calling it “one of the greatest institutions that was ever invented” because it takes civilians from all classes and backgrounds and teaches them teamwork, loyalty and a building block approach to leadership.⁷⁵¹

⁷⁴² Memorandum for Record, Group Interview, Male Fourth-Class cadets, Exhibit 192, at 2.

⁷⁴³ Statement of Captain, Faculty Member, Exhibit 26, at 4.

⁷⁴⁴ Memorandum for Record, Interview with Female First-Class cadet and Female Second-Class cadet, Exhibit 193, at 2.

⁷⁴⁵ Statement of Lt Gen Hosmer, Exhibit 45, at 11 (anecdotal information about female cadets with the least potential to be sexually assaulted: female athletes “guaranteed protection”).

⁷⁴⁶ Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 6.

⁷⁴⁷ Sexual Assault Services Annual Prevention Program Notes, Exhibit 194, at 2.

⁷⁴⁸ Statement of Lt Gen Hosmer, Exhibit 45, at 32.

⁷⁴⁹ Statement of Brig Gen Gilbert, Exhibit 10, at 95-96.

⁷⁵⁰ Statement of Brig Gen Welsh, Exhibit 64, at 65-66; *see also* this Report, Section III.C., Prevention and Awareness Training.

⁷⁵¹ Statement of Maj Gen Lorenz, Exhibit 52, at 47-48.

A former female graduate, despite reporting that she was the victim of harassment at the Academy, found some value in the fourth-class system, stating that it stresses the importance of the military structure of command.⁷⁵²

C. Loyalty to Peers Over Values

The Working Group found as others have observed earlier that cadets have a tendency to place loyalty to peers above loyalty to values. This misplaced loyalty has at times resulted in toleration of inappropriate behavior associated with sexual assault as well as a failure to report assault.

From their first day at the Academy, cadets are taught two competing allegiances: a loyalty to values and a loyalty to peers. As to the former, the Academy stresses the importance of Air Force Core Values and the Academy Honor Code. In contrast, from the earliest stages of Basic Cadet Training, cadets are introduced to the concepts of teamwork and loyalty to peers. The emphasis on loyalty to peers is compounded by the desire of many cadets to feel accepted and avoid being ostracized for taking actions that may be viewed as unpopular by others.

1. Observations from Independent Reviews

The tension between loyalty to values and loyalty to peers was noted by a Character Review Development Panel convened in March 2000 at the request of Lt Gen Oelstrom.⁷⁵³ The panel, chaired by retired Lt Gen Hosmer (a former Academy Superintendent), observed that cadet loyalty to the unit's goals and ideals was relatively weak in comparison to loyalty to peers, the latter of which was emphasized beginning in Basic Cadet Training (BCT).⁷⁵⁴ When the panel reconvened in 2002, the panel expressed that there had been no changes to the BCT program to increase the emphasis on loyalty to the unit's goals, ideals and excellence.⁷⁵⁵

Similar observations were made by an Honor Climate Assessment Task Force chartered in August 2001. Chaired by retired Gen Carns, the Task Force assessed the Academy Honor Code, the Honor System, and conditions surrounding the Honor System at the Academy.⁷⁵⁶ The Task Force found that the "non-toleration" clause of the Honor Code⁷⁵⁷ was at odds with the military training focus on unwavering loyalty to classmates, particularly as expressed in Basic Cadet Training.⁷⁵⁸ While BCT repeatedly stressed the importance of loyalty to peers, it lacked a similar emphasis on the loyalty to values underlying the non-toleration clause.⁷⁵⁹

⁷⁵² Memorandum for Record, Interview with Former Academy Cadet, Exhibit 141, at 4.

⁷⁵³ See Statement of Lt Gen Oelstrom, Exhibit 63, at 19-22.

⁷⁵⁴ Academy Character Development Initial Review Panel Final Report, May 27, 2000, Exhibit 195, at 4.

⁷⁵⁵ Academy Character Development Review Panel Second Meeting Final Report, July 2002, Exhibit 196, at 14.

⁷⁵⁶ See Statement of Lt Gen Dallager, Exhibit 71, at 6.

⁷⁵⁷ "We will not lie, steal, or cheat, nor tolerate among us anyone who does." Report to the Chief of Staff of the Air Force, Re: The Honor Code and System (Carns Report), Exhibit 197, at 1.

⁷⁵⁸ *Id.* at ES-3, ES-4.

⁷⁵⁹ *Id.* at ES-3, ES-4. The task force found that some cadets selectively chose to "opt out" of the non-toleration clause. *Id.* at ES-6.

2. Perceptions of Academy Leadership

Academy leaders interviewed by the Working Group recognized the significance of the issue of loyalty as understood by cadets. Lieutenant General Dallager stated that cadets are taught that in order to survive, they must stick together and not leave their classmates.⁷⁶⁰ He also observed that while holding others accountable to standards is difficult for all age groups, it is even more of a challenge for 18-22 year-olds.⁷⁶¹ Brigadier General Gilbert, the former Commandant, expressed his opinion that for decades the Academy has improperly “beat into our cadets’ heads that the greatest loyalty you have is to your classmates.”⁷⁶² Col Slavec, the Training Group Commander, characterized condonation of misconduct as “the biggest problem we have.”⁷⁶³ She noted in particular condonation of sex in the dorms: “We fight that issue constantly....you have an environment, a culture that condones cohabitation....Nobody turns anybody else in...even though it’s a major cadet discipline infraction.”⁷⁶⁴ The issues of loyalty to peers over loyalty to values was also acknowledged by other Academy leaders, including the Dean of Faculty,⁷⁶⁵ the Athletic Director,⁷⁶⁶ and the Vice-Commandant.⁷⁶⁷

3. Perceptions of AOCs and MTLs

The officers and airmen who interface most directly with cadets also commented on the issue of loyalty to peers and its relationship to toleration of improper and sometimes dangerous behavior. A Group AOC observed that lack of cadet enforcement of the rules is due to misplaced loyalties, which are taught to cadets from the first day they arrive at the Academy.⁷⁶⁸ Another Group AOC referred to cadet misunderstandings of loyalty as the “mafia mentality” in which loyalty to friends is more important than loyalty to the Air Force.⁷⁶⁹ An MTL echoed a similar sentiment, explaining that loyalty is stressed from the beginning of the Academy experience, which means that cadets don’t tell on other cadets in their squadron.⁷⁷⁰

⁷⁶⁰ Statement of Lt Gen Dallager, Exhibit 71, at 31.

⁷⁶¹ *Id.*

⁷⁶² Statement of Brig Gen Gilbert, Exhibit 10, at 13.

⁷⁶³ Statement of Col Slavec, Exhibit 23, at 95.

⁷⁶⁴ *Id.* at 37-38.

⁷⁶⁵ Statement of Brig Gen Wagie, Exhibit 198, at 15 (“I think that probably the one thing among the cadet wing that would be the most beneficial would be for them to somehow change their code of loyalty to say it is important to keep the good name of the squadron, the Academy. It is the right thing to do. It is supporting our values of excellence in service and we shouldn’t let our peers go out and smudge our name.”).

⁷⁶⁶ Statement of Col, Athletic Director, Exhibit 199, at 81 (“[the loyalty to classmates that overrides loyalty to the larger institution] exists here. But these are people that we have to school to have loyalty to the Air Force and the Air Force Academy. You don’t automatically walk in on day one and have loyalty to the Air Force.”).

⁷⁶⁷ Statement of Col Eskridge, Exhibit 124 at 88 (“[Cadets’] loyalties are to their classmates, in some cases, before...this institution, before values....We teach...you [have] to be loyal to your classmate, make a team....you don’t outrun your classmate, everybody finishes together....[I]n some cases....that goes too far.”)

⁷⁶⁸ Statement of Squadron AOC, Exhibit 34 at 7.

⁷⁶⁹ Statement of Group AOC, Exhibit 17, at 3.

⁷⁷⁰ Statement of Female MTL, Exhibit 39, at 1; *see also* statement of Male MTL, Exhibit 133, at 2 (explaining that loyalty to others over loyalty to core values is especially true when a cadet does not believe in a particular rule like underage drinking).

4. Cadet Toleration of Improper Behavior

Some cadets acknowledged the importance of peer acceptance and loyalty to peers.⁷⁷¹ One female Fourth-Class cadet indicated that loyalty to her classmates was more important than any issue.⁷⁷² A female First-Class cadet observed that failure to report alcohol infractions was driven both by a loyalty to the cadets committing the infractions, as well as a fear of being known as the person who turned someone in.⁷⁷³ A female Fourth-Class cadet explained that nobody reported alcohol infractions because cadets look out for each other, support their classmates, and avoid being scorned, lessons they have been taught in Basic Cadet Training.⁷⁷⁴

Other cadets stated that they would not tolerate what they perceived to be a “serious” offense such as sexual assault.⁷⁷⁵ However, the Working Group identified several instances where a misplaced loyalty to peers appears to have factored into cadet reactions upon learning of alleged instances of sexual assault. In one allegation investigated by AFOSI, a victim explained that after she reported to a classmate outside of her squadron that several female cadets had been assaulted by a male cadet, her cadet squadron commander called a meeting and, in the presence of the assailant, reprimanded her for taking the matter outside the chain of command and directed that the matter not leave the room.⁷⁷⁶ In another investigated allegation, the victim informed AFOSI that after she reported to her cadet element leader that she had been sexually assaulted by a male cadet, the element leader asked her if reporting the incident was important enough to jeopardize the assailant’s career.⁷⁷⁷ Finally, in a separate investigated allegation, a victim informed AFOSI that upon confiding in a male cadet that she had been sexually assaulted, the male cadet told her to remember that “[the assailant] was a really good football player and that he has gotten away with a lot of stuff in the past” and that if she reported the assault the assailant would most likely think of her as a “bitch” and that he would “not learn anything from this.”⁷⁷⁸

5. Efforts to Address Loyalty to Peers

The Academy has attempted to respond to the misplaced emphasis of loyalty to peers by addressing the broader concept of character.⁷⁷⁹ Programs developed by the Center for Character Development have focused on character issues and moral dilemmas, including the tension between loyalty to peers and loyalty to values.⁷⁸⁰ However, the current Center for Character Development

⁷⁷¹ See also, Memorandum for Record, Group Interview, Male Cadets, Exhibit 161, at 1 (the attitude among cadets is “snitches get stitches”, loyalty over all, including over integrity, is learned in BCT).

⁷⁷² Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 18, at 2.

⁷⁷³ Statement of Female First-Class cadet, Exhibit 100, at 2.

⁷⁷⁴ Statement of Female Fourth-Class cadet, Exhibit 200, at 2.

⁷⁷⁵ *Id.* at 3 (cadet doesn’t think the system would protect a sexual predator); Memorandum for Record, Interview with Male First-Class cadet, Exhibit 201, at 1 (male cadets wouldn’t tolerate a “rape-friendly” environment); Memorandum for Record, Interview with Female First-Class cadet and Female Second-Class cadet, Exhibit 193, at 2 (they believe most of the male cadets would not tolerate sexual offenders).

⁷⁷⁶ AFOSI Report of Investigation, Exhibit 393, at 4.

⁷⁷⁷ AFOSI Report of Investigation, Interview of Second-Class cadet, Exhibit 180, at 3.

⁷⁷⁸ AFOSI Report of Investigation, Form 1168, Statement of Suspect/Witness/Complainant, Exhibit 202, at 6.

⁷⁷⁹ Statement of Col, Exhibit 203, at 4.

⁷⁸⁰ There are four mandatory seminars of this nature a cadet will attend during his or her time at the Academy: the Vital Effective Character Through Observation and Reflections (VECTOR) a three-hour workshop held for Fourth-Class cadets, a three to four hour workshop call Respect and Responsibility held last year for Third-Class cadets, the Leaders in Flight Today (LIFT) workshop, a prototype, all-day seminar held this year for Second-Class cadets, and an all-day seminar, CAPSTONE/Academy Character Enrichment Seminar (ACES), held for First-Class cadets. Statement of Chief of Character and Leadership Education, Center for Character Development, Exhibit 204, at 2-4.

Director noted that these programs have only minimal impact on cadets.⁷⁸¹ While the Center for Character Development is beginning new character seminars and recurring training for each cadet class,⁷⁸² the initial Character Development Review Panel found no established means of assessing character development at the Academy,⁷⁸³ and the follow-on panel found that while basic steps toward assessment had been initiated, problems with assessment remained.⁷⁸⁴

The *Agenda for Change* notes that “...loyalty to values and loyalty to institution must be placed above misplaced loyalty to someone who’s betrayed our values and our institution.”⁷⁸⁵ To that end, the *Agenda for Change* asserts that “shunning of cadets who attempt to maintain high standards and report sexual assault will not be tolerated.”⁷⁸⁶ The *Agenda for Change* also places renewed emphasis on the responsibilities that cadet commanders have for the actions of their subordinates, and makes clear that the senior ranking cadet present in an incident resulting in an allegation of sexual assault will be responsible and accountable for all infractions committed by junior cadets.⁷⁸⁷

D. Alcohol

Our review suggests a link between alcohol and misconduct in general, and between alcohol and sexual assault in particular.⁷⁸⁸ In an opinion echoed by other Academy leaders, Major General Stephen Lorenz, a former Commandant of Cadets, stated: “Ninety-five percent of all the alleged sexual assaults that I dealt with when I was there were directly related to alcohol....”⁷⁸⁹ The Working Group’s review⁷⁹⁰ of allegations of sexual assault over the last ten years indicated that at least 40% of investigated cadet-on-cadet allegations involved the use of alcohol by the cadet suspect, the cadet victim, or both.⁷⁹¹

1. Rules on Alcohol.

Three alcohol-related rules apply to cadets at the Academy. First, alcoholic beverages and “related paraphernalia” are not permitted in the dormitories.⁷⁹² Second, Academy instructions prohibit cadets from excessive use of alcohol⁷⁹³ and the misuse of alcohol.⁷⁹⁴ Finally, the Uniform

⁷⁸¹ Statement of Col, Exhibit 203, at 4.

⁷⁸² Statement of Brig Gen Gilbert, Exhibit 10, at 21-22.

⁷⁸³ Academy Character Development Initial Review Panel Final Report, May 27, 2000, Exhibit 195, at 7. The Character Review Development Panel has recommended interim character assessment measures while a longer-term effort to measures character development is ongoing. *Id.* at 7-8.

⁷⁸⁴ USAFA Character Development Review Panel Second Meeting Final Report, July 2002, Exhibit 196, at 9-10.

⁷⁸⁵ *Agenda for Change*, Exhibit 4.

⁷⁸⁶ *Id.*

⁷⁸⁷ *Id.*

⁷⁸⁸ Statement of CASIE Program Manager, Exhibit 99, at 6. *See also* Statement of 10th Air Base Wing Legal Office Paralegal, Exhibit 175. The NCOIC of Military Justice and administrator of the Victim/Witness Assistance Program at the Academy stated that alcohol is a problem at the USAFA, that alcohol was involved in all the sexual assault cases she had seen, and that over 70% of all cadet cases seen by her office involved alcohol. *Id.* at 3.

⁷⁸⁹ Statement of Maj Gen Lorenz, Exhibit 52, at 20-21. *See also* Statement of Brig Gen Gilbert, Exhibit 10, at 57, and Statement of Col Slavec, Exhibit 23, at 36-37.

⁷⁹⁰ The Working Group did not locate any Academy analysis of the link between alcohol and known sexual assault cases.

⁷⁹¹ Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 9. Of the forty investigated cadet-on-cadet allegations, sixteen (or 40%) involved the use of alcohol. *Id.*

⁷⁹² AFCW Instruction 34-601, Dormitory Standards, ¶¶ 2.6 and 4.2.

⁷⁹³ AFCW Instruction 36-2909, Conduct Standards, ¶ 2.2.4.

Code of Military Justice prohibits underage drinking (by assimilation of state law) and drunk and disorderly conduct.⁷⁹⁵

Despite these clear standards, a succession of Academy leaders have concluded that alcohol at the Academy is a significant problem in itself, and contributes significantly to many forms of cadet misconduct, including incidents of sexual assault.⁷⁹⁶

Interviews indicated that cadets often violate the prohibitions on alcohol; some stated they had observed evidence of alcohol in the dorms.⁷⁹⁷ Others stated that cadets have appeared drunk in the dorms.⁷⁹⁸ This is further substantiated by our review of the Academy's discipline database, which showed that over the last ten years, of all Class C and D offenses (the most serious offenses) committed by cadets, alcohol offenses are the most common.⁷⁹⁹

2. Alcohol and the Social Climate Surveys

Since the 1991-1992 Academic Year, the Academy has administered to cadets an annual Social Climate Survey. In addition to the social climate questions, as early as 1993 the survey contained questions relating to cadets' use of and attitudes towards alcohol. However, the alcohol portion of the climate survey appears to have gone largely ignored in recent years. Neither the Center for Character Development nor the Cadet Counseling Center currently requests the results from the alcohol portion, nor did either organization indicate any ownership of that portion of the survey.⁸⁰⁰

The Academy's awareness and responsiveness to the issue of alcohol appears to have varied considerably over the past ten years. The 1993 Survey was followed by a detailed report which

⁷⁹⁴ *Id.* at ¶ 3.2.

⁷⁹⁵ UCMJ art. 134.

⁷⁹⁶ See Statement of Maj Gen Lorenz, Exhibit 52, at 20-21; Statement of Brig Gen Gilbert, Exhibit 10, at 57; Statement of Col Slavec, Exhibit 23 at 44-48; Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 8-9, 14, and 45.

⁷⁹⁷ See Statement of Female Fourth-Class cadet, Exhibit 200, at 2; Statement of 10th Air Base Wing Legal office Paralegal, Exhibit 175, at 3; Statement of TSgt, Female MTL, Exhibit 31, at 5; Statement of Male First-Class cadet, Exhibit 101, at 3; Statement of First-Class cadet, Exhibit 100, at 2; and Memorandum for Record, Interview with Female Group Superintendent, Exhibit 15, at 2; Memorandum for Record, Interview with Dorm Manager, Exhibit 359, at 1; Memorandum for Record, Interview with Deputy Group AOC, Exhibit 221, at 2; Statement of Group AOC, Exhibit 17, at 4 (stating that he thinks the cadet chain of command they are winking at the presen[ce] of alcohol in the dorms.); *contra*, Statement of Fourth-Class cadet, Exhibit 38, at 2 (reporting that he hasn't seen alcohol in the dorms); and Statement of First-Class cadet, Exhibit 151.

⁷⁹⁸ See Statement of First-Class cadet, Exhibit 149, at 2; Statement of Group AOC, Exhibit 17, at 6 (stating that there are Fourth-Class cadets who don't respect First-Class cadets because they see them drunk in the dorms); Statement of Fourth-Class cadet, Exhibit 38, at 2 (reporting that he has seen cadets drunk in the dorms, but hasn't actually seen alcohol in the dorms) and Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 57, at 2.

⁷⁹⁹ Memorandum for Record, Trend Analysis of Discipline Data, Exhibit 147. Specifically, the summary states:

The offense that predominated throughout the ten-year period is alcohol. This represents an average of ninety-seven alcohol violations per year, or 2.26% of the total population of students in a given year. The 1998-2003 data further show that of the 3023 records, 580 involved alcohol, which is 19% of all class "C" & "D" disciplinary actions.

⁸⁰⁰ Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62, at 2.

indicated that “[a]ttitudes about alcohol consumption indicate few problems.”⁸⁰¹ The summary noted that “about 40% [of cadets] reported they did not drink.”⁸⁰²

By 1996, the number of cadets reporting that they did not drink remained at close to 40%.⁸⁰³ However, contemporaneous with the Fall 1996 Climate Survey, the Academy established a task force to examine alcohol use among cadets.⁸⁰⁴ An alcohol program was briefed in December 1996, and identified the scope of the alcohol issue using three sources: 1) high school statistics; 2) cadet infractions related to alcohol; and 3) the results of the alcohol section of the Fall 1996 Climate Survey.⁸⁰⁵

The December 1996 briefing included an action plan consisting of immediate, short range, and long range plans.⁸⁰⁶ The immediate plan included: 1) a one-time alcohol inspection to include dorm rooms, common areas, cars, and gym lockers; 2) additional special emphasis inspections and a responsible drinking campaign; 3) a crackdown on the use of fake IDs; 4) increased punishments for alcohol-infractions; 5) a wing briefing; and 6) changes to the rules of an on-campus sports bar.⁸⁰⁷ The short-range plan contemplated several additional educational and preventative programs. The long-range plan proposed major disciplinary changes that would have required disenrollment for a DUI, providing alcohol to a minor, or use or possession of a fake ID, and a Military Review Committee for other alcohol infractions.⁸⁰⁸

Major General Stephen Lorenz, the Commandant of Cadets from 1996 to 1999, explained that many of these changes were implemented:

[T]here was this place called the Sports Bar, when I was there, in Arnold Hall, and the focus was on bar, not sports. Well, I shut it down for two months, got everybody’s attention, and then we raised the level of punishment to 80, 80 and 5, 80 demerits, 80 tours, and 5 months restriction, to any alcohol hit, whether you were an underage drinker and you had one sip or you got a DUI. The other thing...I evolved into, [was that] if you had two alcohol hits while you were there, I recommended disenrollment so we disenrolled five or six cadets while I was there, on this issue.⁸⁰⁹

Major General Lorenz elaborated further on the changes:

We came up with a multi-access attack on alcohol because it would directly relate to a lot of issues.... We had education. We started spending more time educating about, not the evils of liquor, but the effects of liquor, how it affected your life. We...brought in Bacchus, which was a college nationwide organization for abstinence, for responsible drinking. We brought in [a] Hotline [offering free rides to intoxicated cadets].... [E]very cadet who had

⁸⁰¹ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1993-1994, Attachment 1, Summary Report at 4).

⁸⁰² *Id.* (Summary Report at 13).

⁸⁰³ *Id.* (AY 1996-1997, Attachment 3). Approximately 36% of cadets indicated they did not drink.

⁸⁰⁴ *Id.* (AY 1996-1997, Attachment 4).

⁸⁰⁵ *Id.* (AY 1996-1997, Attachment 4). Although the briefing only provided the results from the Fall 1996 survey, the information on cadet infractions related to alcohol was provided for the three preceding years. This information suggested an upward trend in the number of alcohol-related infractions.

⁸⁰⁶ *Id.*

⁸⁰⁷ *Id.*

⁸⁰⁸ *Id.*

⁸⁰⁹ Statement of Maj Gen Lorenz, Exhibit 52, at 21.

an alcohol hit met with me on Saturday mornings, including the entire cadet leadership, their entire chain of command.⁸¹⁰

Despite the numerous changes implemented following the alcohol task force and alcohol results of the Fall 1996 Climate Survey, alcohol results from subsequent surveys do not appear to have received similar attention.

3. Alcohol and Fourth-Class cadets.

There are indications that female Fourth-Class cadets who consume alcohol are particularly vulnerable to sexual assault.⁸¹¹ The Academy's Victim Advocate Coordinator illustrates this point in her sexual assault awareness training when she highlights to cadets the two main risk factors involved in sexual assault are "alcohol [and] fraternization. Those are the two biggies."⁸¹² This observation probably stems from the fact that when a female Fourth-Class cadet drinks and fraternizes, she is engaging in two prohibited behaviors: underage drinking (a violation of the UCMJ⁸¹³ and cadet conduct standards) and cadet fraternization (a violation of cadet conduct standards). "Fraternization" at the Academy generally refers to dating between a fourth-class (freshman) cadet and an upperclass cadet, although the proper term is "unprofessional relationship."⁸¹⁴

With her judgment perhaps impaired from consuming alcohol, and possibly feeling pressure from the more senior cadet to violate several Academy rules, the junior cadet could find herself in a leverage situation where she may feel unable to decline (or later report) sexual advances from the upperclassman. In addition to leading to sexual activity the cadet may not have wanted, such circumstances greatly complicate the legal practicalities of proving a criminal offense where the issue of consent, and a suspect's mistake of fact regarding consent, may be significant issues.⁸¹⁵

4. Reporting Alcohol Abuse.

Enforcement of the rules regarding alcohol depends on adequate reporting of offenses. According to Academy regulations, "[a]ll Academy personnel have a responsibility to report known outstanding conduct or suspected violations of established standards to the cadet's chain of command."⁸¹⁶ Cadets are required to report infractions committed by other cadets and are even required to self-report infractions they commit.⁸¹⁷ Those cadets who fail to report observed

⁸¹⁰ *Id.* at 22.

⁸¹¹ Seventeen of the forty investigated allegations of a cadet-on-cadet assault involved a cadet assailant who was higher in class rank than the cadet victim. Nine of these victims were female Fourth-Class cadets. Of those nine cases, four involved alcohol. Data of Sexual Assault Allegations (Victim Information), Exhibit 383. These numbers are not sufficiently high to draw statistical conclusions; however, from an anecdotal point of view the numbers illustrate the point made by the Victim Advocate Coordinator that the combination of alcohol and fraternization increases the risk of sexual assault to female cadets. Statement of Victim Advocate Coordinator, Exhibit 50, at 75.

⁸¹² *Id.*

⁸¹³ Underage drinking is a violation of Colorado law. See COLO. REV. STAT. §18-13-122. This law applies to those subject to the UCMJ, through the Assimilative Crimes Act, 18 U.S.C. §13 and UCMJ art. 134.

⁸¹⁴ AF Cadet Wing Instruction 36-2909, ¶ 3.7.

⁸¹⁵ See this Report, Section III.B., The Academy's Definition of Sexual Assault" and Section VI.F., Review of Sexual Assault Cases.

⁸¹⁶ AF Cadet Wing Instruction 51-201, ¶ 3.1.

⁸¹⁷ *Id.*

violations can be sanctioned for their failure to do so.⁸¹⁸ Despite these requirements, the Working Group found that cadets are often unwilling to report other cadets for violations.⁸¹⁹ Particularly with regard to alcohol offenses, cadets may be unwilling to report violations because they may not believe there is anything wrong with the misconduct involved.⁸²⁰

5. Enforcement.

Even though evidence suggests that members of the Academy staff enforce the rules against possession of alcohol in the dorms when they are aware of specific violations,⁸²¹ there is a perception among some that alcohol rules are not enforced.⁸²²

Academy staff appear to lack a complete understanding of the basic rules relating to alcohol and how those rules apply to cadets. Even though those interviewed recognized that cadets could be punished for possession of alcohol in the dorms or for underage drinking, when asked about potential sanctions for alcohol violations, almost no permanent party interviewed expressed awareness that cadets could be punished under the UCMJ for being drunk in the dorms or elsewhere on Academy grounds.⁸²³ Instead most permanent party focused on punishing cadets for violating the Academy's prohibition against having alcohol on Academy grounds.⁸²⁴

6. Treatment.

At present, the Academy has a three-tier system for helping cadets who may have alcohol (or drug) related problems: 1) an initial assessment known as SHARP (Stronger Health Through Alcohol Reduction Program);⁸²⁵ 2) the Cadet Counseling Center; and 3) the Alcohol Drug Abuse Prevention and Treatment (ADAPT) Program.⁸²⁶

⁸¹⁸ *Id.* at ¶ 3.2.6.3. A cadet guilty of condonation (failure to report a known offense) “may receive demerits and sanctions up to the amount awarded to the cadet who committed the actual violation.” (Emphasis added.)

⁸¹⁹ See this Report, Section IV.C., Loyalty to Peers Over Values, and Section III.D., The Unique Reporting System.

⁸²⁰ See Statement of Brig Gen Wagie, Exhibit 198, at 13; Statement of Fourth-Class cadet, Exhibit 200, at 3 (stating that even though there is a lot of underage drinking, it isn't a problem.); and Statement of MTL, Exhibit 133, at 2.

⁸²¹ Statement of Female MTL, Exhibit 31, at 5; Statement of Group AOC, Exhibit 17, at 4; Statement of Squadron AOC, Exhibit 34, at 7 (stating that the rules on alcohol are enforced by the staff with regularity, but by varying degrees by the cadets themselves).

⁸²² The lack of enforcement can be inferred from numerous factors, including the presence of alcohol containers regularly found at the Academy. Memorandum for Record, Interview with Sijan Hall Manager, Exhibit 359. See also Statements of Squadron AOC, Exhibit 36, at 4; Female MTL, Exhibit 39, at 3.

⁸²³ UCMJ art. 134 (Drunk and Disorderly Conduct).

⁸²⁴ Statement of Col Slavec, Exhibit 23, at 46 (discussing that there is nothing you can do about drunk cadets in the dorms, as long as they were drinking legally before they got to the dorms and they didn't drive under the influence of alcohol); Statement of Squadron AOC, Exhibit 36, at 4; Statement of Col Eskridge, Exhibit 124, at 55 (“[T]here is nothing against the law from having too much to drink assuming you don't do anything else.”) Some interviewed suggested that more comprehensive inspections of cadet rooms would help in finding more alcohol in rooms and would have a deterrent effect upon cadets. See Statement of Female MTL, Exhibit 31, at 5. Others stated that recent alcohol amnesty sessions (allowing cadets to turn in contraband alcohol without penalty) may send the wrong message to cadets regarding rule enforcement. See Statement of Squadron AOC, Exhibit 35, at 6; Statement of Group AOC, Exhibit 17, at 4.

⁸²⁵ SHARP was implemented at the Academy in 2001 in response to the high rate of alcohol incidents at the Academy. Memorandum for Record, Interview with NCOIC, Alcohol and Drug Abuse Prevention and Treatment Program, Exhibit 362, at 1.

⁸²⁶ *Id.*

Under the SHARP program, all cadets complete an assessment shortly after they arrive at the Academy to determine whether they fall into a category that places them at a high risk for having alcohol problems.⁸²⁷ SHARP personnel then take intervention steps that are geared towards helping the cadet avoid alcohol abuse. A cadet's involvement with the SHARP program is voluntary. The SHARP program is experimental, is operated by two contract employees, and has been in existence at the Academy for only two years.⁸²⁸

Cadets are referred to the Cadet Counseling Center for alcohol-related matters after a cadet has been involved in some sort of alcohol misconduct. The ADAPT Program is an Air Force program that ranges from six months of awareness training to enrollment in an in-patient treatment program. Cadets are referred to either the Cadet Counseling Center or the ADAPT program, depending upon the level of seriousness of their alcohol incident. The more serious cases are referred to ADAPT.⁸²⁹

The ADAPT program, which has only informally monitored trends over the last year and a half, has not performed any formal trend analysis over the last year.⁸³⁰ No one from the ADAPT program has recently assisted any cadets who were known to have been the victim or perpetrator in a sexual assault incident. However, if that were the case, they would brief that information to the 10th Air Base Wing Commander during the quarterly climate assessment briefing.⁸³¹

E. Dormitory Environment

A significant number of investigated allegations of sexual assault occurred in the dormitories. Of the forty investigated allegations of sexual assault involving both a cadet suspect and victim, twenty-two (or 55%) occurred in the dorms.⁸³² Additionally, in the sexual assault portion of the Social Climate Surveys conducted in years 1998, 2000, 2001 and 2002, of the cadets who reported being sexually assaulted, an average of 52% of those assaults occurred in the dorms.⁸³³ With that in mind, the Working Group examined factors related to the dormitory environment.

1. Dormitory Characteristics

There are two co-ed dorms at the Academy, Vandenberg Hall and Sijan Hall. Both are similar in layout and appearance.⁸³⁴ Cadets are normally housed two to a room, although some Fourth-Class cadets are assigned three to a room.⁸³⁵ Each room is approximately thirteen feet wide

⁸²⁷ SHARP personnel look at specific background factors, like whether there is a family history of alcohol problems, to make this determination.

⁸²⁸ Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110, at 19-22. The contract is due to expire in 2004. *Id.*

⁸²⁹ Memorandum for Record, Interview with NCOIC, Alcohol and Drug Abuse Prevention and Treatment Program, Exhibit 362, at 1-2.

⁸³⁰ *Id.* at 2.

⁸³¹ *Id.*

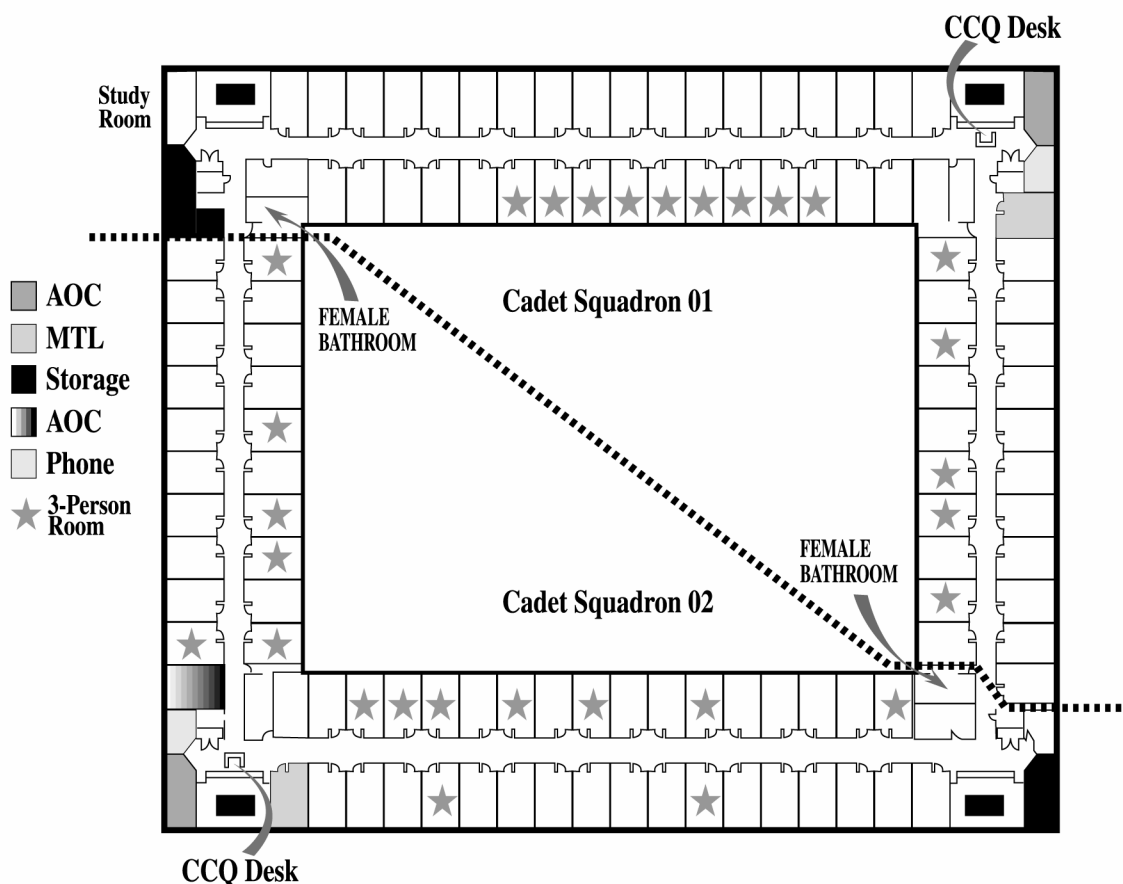
⁸³² Data of Sexual Assault Allegations (Victim Information), Exhibit 383, Attachment 9.

⁸³³ Academy Climate Survey Data, AY 1993-2002, Exhibit 53.

⁸³⁴ Vandenberg is the larger of the two dorms with 1325 bedrooms while Sijan has 936 bedrooms. USAFA Fact Sheet, Exhibit 402, at 4.

⁸³⁵ However, an ongoing renovation in Sijan Hall has 200 rooms out of service, which requires several rooms in both dorms to be designated as three-person rooms. Three person rooms are generally assigned to Fourth-Class cadets.

and eighteen feet long. A typical room contains two large closets, a counter with a built-in sink, a large mirror and a medicine cabinet. Rooms also have twin-size modular beds, and a dresser and a desk for each cadet. Dorm rooms do not have private bathrooms, but rather central bathrooms located throughout the dorm. Squadron dorm rooms are generally in a series of halls, in a rectangular shape called quads. In each quad there are male bathrooms in each corner of the quad and a total of two female bathrooms on opposite corners of the quad. (See diagram of typical cadet dormitory area, following below.)



2. Room Assignments

The 34th Support Group is responsible for allocating dorm rooms to each cadet squadron. Cadet squadron commanders are responsible for making or approving room assignments.⁸³⁶ Cadets can only room with members of the same sex and usually members of the same class. Exceptions can be made to allow cadets to room with members one class higher or lower.⁸³⁷ Room assignments are made based on individual squadron and group rules within the parameters outlined above. Cadets are billeted within their squadron area and to the extent possible within their respective flights.⁸³⁸ Cadets holding leadership positions are assigned rooms first to allow them to

Memorandum for Record, Interview with Dormitory Manager, Exhibit 359. AF Cadet Wing Instruction 34-601, ¶ 3.4., Exhibit 13.

⁸³⁶ AF Cadet Wing Instruction 34-601, ¶ 3.4.. Exhibit 13.

⁸³⁷ *Id.* ¶ 3.5.3.

⁸³⁸ A flight is a subunit of a squadron.

be close to their colleagues and cadet commanders.⁸³⁹ A common method for assigning rooms to members who are not in leadership positions is First-Class cadets get first choice of the remaining rooms within the squadron area, then Second-Class cadets get next choice, then third class and Fourth-Class cadets are assigned the remainder of the rooms.⁸⁴⁰

Air Force regulations require male and female enlisted and officers to be separated by floor, wing or hallway when dormitories have central bathrooms.⁸⁴¹ The Academy does not have a waiver to these regulations. However, the office of primary responsibility for dormitories at Headquarters Air Force stated “it is not our position that cadet dorms must use AF dormitory policy because the Academy has different issues, policies and goals from those which pertain to enlisted personnel or unaccompanied/single officers” as such, the decision on how to house cadets can be determined locally in conjunction with Air Force leadership approval.⁸⁴²

When women first attended the Academy, their rooms were separate, and shortly thereafter they were grouped together within squadron areas near the women’s bathroom.⁸⁴³ For some time, male and female cadets at the Academy have not been separated in the dorm, but rather intermingled with little consideration given to grouping female cadets in close proximity to the female bathrooms.⁸⁴⁴ The current assignment method allows female cadets to be housed next to upperclass males and requires some women to walk long distances to the showers in their robes or athletic wear. Air Force regulations for officer and enlisted dorms with central bathrooms require a partition to prevent visual access by members of the opposite sex.⁸⁴⁵ While some Air Officers Commanding (AOCs) report that they review and approve room assignments made by cadets and apply consideration to keep women close to the bathrooms, these considerations are not broadly implemented.⁸⁴⁶ A Group Military Training Leader (MTL) thought that MTLs should have more oversight of the room assignment process to capitalize on cadet personalities, strengths and weakness.⁸⁴⁷

The views about whether women should be grouped together in the dorms varied. A focus group of fourth-class female cadets recommended grouping female cadets together in the dorms.⁸⁴⁸ Other female cadets recommended against segregating female cadets.⁸⁴⁹ A Group MTL recommended grouping female cadets together to provide more oversight and visibility of the women’s rooms.⁸⁵⁰ After plans were announced to relocate females closer to the bathrooms while maintaining unit integrity, several cadets voiced concerns about the new policy. Many believed that

⁸³⁹ AF Cadet Wing Instruction 38-101, ¶ 1.9.

⁸⁴⁰ Memorandum for Record, Interview with Group Superintendent, Exhibit 15, at 1; Memorandum for Record, Interview with Deputy Group AOC, Exhibit 357, at 2.

⁸⁴¹ Air Force Instruction 32-6005, ¶ 1.5.4.

⁸⁴² See E-mail, Dormitory Policy, April 9, 2003, Exhibit 375 (regarding unaccompanied housing policy at the Air Force Academy).

⁸⁴³ See Statement of Female Academy Graduate, Exhibit 14.

⁸⁴⁴ Memorandum for Record, Interview with Group Superintendent, Exhibit 15. Memorandum for Record, Interview with Deputy Group AOC, Exhibit 357; Memorandum for Record, Interview with Group Superintendent, Exhibit 15.

⁸⁴⁵ Air Force Instruction 32-6005, ¶ 1.5.4.4.

⁸⁴⁶ Statement of Squadron AOC, Exhibit 34, at 2-3; Memorandum for Record, Interview with Group Superintendent, Exhibit 15; *see also* Memorandum for Record, Interview with Deputy Group AOC, Exhibit 357.

⁸⁴⁷ Memorandum for Record, Interview with Group Superintendent, Exhibit 15, at 1.

⁸⁴⁸ Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24, at 1.

⁸⁴⁹ Memorandum for Record, Interview with First-Class cadets, Exhibit 111, at 1; Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 57.

⁸⁵⁰ Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24, at 1.

separating male and female cadets would be detrimental to teamwork and gender relations and cause females to be treated differently.⁸⁵¹

Fourth-class female cadets report that living side-by-side with upperclass males sometimes blurs the relationship between official duties and social contact. On some occasions, a relatively casual atmosphere is presented by upperclass males living next door to female Fourth-Class cadets.⁸⁵² Some fourth-class female cadets find it difficult to respond to the sometimes casual gestures of the upperclassmen. They fear they will get in trouble if they respond or act in the same manner as their upperclass neighbors.⁸⁵³

The *Agenda for Change* will result in clustering women near their bathrooms while keeping them within their squadrons, consistent with Air Force Instruction and practice.

3. Officer and NCO Presence in the Dorms

Offices for Air Officers Commanding (AOCs) and Military Training Leaders (MTLs) are located within the dorms. While these members may work long hours, they normally depart their duty sections in the early evening during the week and by mid-afternoon on training weekends.⁸⁵⁴ To provide additional supervision in the dorms, each squadron has a Cadet-In Charge of Quarters (CCQ). The CCQ is typically a Third-Class cadet and is the AOC's official representative in the dorms before and after duty hours.⁸⁵⁵ The CCQs oversee their respective squadron dormitory areas from 6:00 AM until Taps, plus thirty minutes⁸⁵⁶ Each CCQ is centrally located in the squadron area and has a clear view of the dorm rooms within their respective squadrons. CCQs are responsible for maintaining security in the dorms, checking unauthorized or unescorted visitors, and enforcing dorm standards.⁸⁵⁷ While the CCQs are charged with enforcing dorm standards, they have little control over first and Second-Class cadets who are superior to them in rank, making it difficult for them to enforce standards.⁸⁵⁸ The CCQs depart their duty location after the evening accountability inspection called Dorm Inspection, which is conducted at Taps.⁸⁵⁹ This leaves the dorms without direct supervision after 11:00 PM on weeknights and 2:00 AM on non-training weekends until 6:00 AM the following morning.

After normal business hours, there has been little officer or NCO presence in the dormitories. Prior to January 2003, a single Officer of the Day and cadet Senior Officer of the Day patrolled from 7:00 PM until 11:30 PM, after which time they were permitted to sleep in the

⁸⁵¹ Memorandum for Record, Interview with First-Class cadets, Exhibit 111, at 1; Statement of Fourth-Class cadet, Exhibit 200, at 4.

⁸⁵² Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24, at 1.

⁸⁵³ *Id.*

⁸⁵⁴ Statement of MTL, Exhibit 39, 2; Memorandum for Record, Interview with Group MTL, Exhibit 15, at 3.

⁸⁵⁵ AF Cadet Wing Instruction 38-102, ¶¶ 3.1 and 3.4.

⁸⁵⁶ Taps is sounded at 10:30 p.m. during the week, 12:00 a.m. on Fridays preceding training weekends, and at 1:30 a.m. on non-training weekends, IAW AF Cadet Wing Instruction 38-102 ¶ 3.4.

⁸⁵⁷ AF Cadet Wing Instruction 38-102, ¶¶ 3.1 and 3.6.17.

⁸⁵⁸ See Memorandum for Record, Interview with Group MTL, Exhibit 15, at 1 and *see generally* Memorandum for Record, group interview with Female Fourth-Class cadets, Exhibit 24.

⁸⁵⁹ Dorm Inspection is a commander's accountability tool where cadets are required to be in their rooms at Taps. The CCQ and the squadron duty officer (First-Class cadet) physically go to each room and verify that each cadet is in their room. AF Cadet Wing Instruction 38-102 ¶ 2.3.

training wing operations center, located in the cadet area.⁸⁶⁰ The patrol area includes Vandenberg and Sijan Halls, the cadet field house, the library, Mitchell and Arnold Halls, the cadet chapel, cadet parking lots, and the gym.⁸⁶¹ The Officer of the Day and the cadet Senior Officer of the Day are responsible for conducting random and periodic inspections of the cadet area facilities, dormitories and adjacent parking lots at least three times, once during the Academic Call to Quarters (ACQ),⁸⁶² once at Taps, and once more some time after Taps.

The after-hours patrols were changed to twenty-four hour patrols in January 2003. This was reportedly done because the Commandant was concerned that cadets were not returning to their rooms at Taps, but were staying in the stairwells talking on cell phones, drinking alcohol in the dorms, and cadets going “over the fence” (absent without leave).⁸⁶³ To add additional officer/NCO presence in the dorms, on March 22, 2003, four additional Officers of the Day (one from each group) were added and required to patrol the cadet area twenty-four hours a day.⁸⁶⁴ Although AOCs and MTLs were present in the evenings on a limited basis, the previous arrangements with only one Officer of the Day and cadet Senior Officer of the Day patrolling the entire cadet area was insufficient, especially on the weekend.⁸⁶⁵ Under this system, the effective presence of officers or NCOs in the dorms after hours was limited, and for practical purposes, the dorms were subject to the authority of cadets.

4. Access to Rooms by Cadets

Fourth-Class cadets are not provided with clear guidance as to when their doors must remain open and when they can lock their doors. In one Cadet Wing Instruction it states cadets may lock their doors while in their rooms.⁸⁶⁶ In another Instruction, it states Fourth-Class cadets may be required to have their dormitory room door open when they are occupying their rooms from 6:20 AM until Academic Call to Quarters on duty days.⁸⁶⁷ Interviews indicate that these policies are implemented differently depending on the squadron a cadet is assigned to.⁸⁶⁸ In practice, Fourth-Class cadets are generally required to keep their doors fully open from 6:20 AM until either academic call to quarters or Taps and may not lock their doors unless changing clothes or sleeping. Additionally, there is no clear guidance as to when an upperclass cadet can enter a Fourth-Class cadet’s room.⁸⁶⁹

Prior to March 2003, members of the opposite sex could be in the same room to conduct official or unofficial business. They were required to keep their door open, or ajar with the deadbolt

⁸⁶⁰ See Memorandum for Record, Interview with Deputy Group AOC, Exhibit 221; Statement of Col Eskridge, Exhibit 124, at 81.

⁸⁶¹ 34th Training Wing Operating Instruction 10-1. Officer Of The Day (OD) Program, Exhibit 405, at 1; *see* Statement of Col Eskridge, Exhibit 124, at 82; and Memorandum for Record, Deputy Group AOC, Exhibit 221.

⁸⁶² Academic Call to Quarters is time for cadets to study and runs from 7:00 p.m. until Taps.

⁸⁶³ *See generally* Statement of Col Eskridge, Exhibit 124, at 81; Memorandum for Record, Interview with Deputy Group AOC, Exhibit 221; and Statement of Brig Gen Gilbert, Exhibit 10, at 82.

⁸⁶⁴ *See* Statement of Col Eskridge, Exhibit 124, at 81; Memorandum for Record, Interview with Deputy Group AOC, Lt Col, Exhibit 221; and Statement of Col Slavec, Exhibit 23, at 179-181.

⁸⁶⁵ *See* Statement of Male Group AOC, Exhibit 17. *See* Group Interview with Chaplains, Exhibit 220. *See also* Statement of Squadron AOC, Exhibit 36.

⁸⁶⁶ AF Cadet Wing Instruction 31-101, ¶ 3.2.1.

⁸⁶⁷ AF Cadet Wing Instruction 36-3004, ¶ 5.2.2.2.3.

⁸⁶⁸ *See* Statement of Female Fourth-Class cadet, Exhibit 200; Memorandum for Record, Interview with Group MTL, Exhibit 15; and Memorandum for Record, Interview with Deputy Group AOC, Exhibit 221.

⁸⁶⁹ E-mail, Re: Room Arrangements, from 34 TRG/PE to Working Group, Exhibit 222.

fully extended. Upperclass cadets in a room with a fourth-class (freshman) cadet (same sex or opposite sex) in a one-on-one situation were required to keep the door fully open.⁸⁷⁰ In March 2003, the Training Wing published a training alert, which requires cadets to keep the door completely open when members of the opposite sex are in the room. They are no longer allowed to keep the door ajar with the deadbolt extended. The alert allows upperclassmen to enter a Fourth-Class cadet's room only for official business. The *Agenda for Change* altered this by requiring an open door whenever a non-roommate is in the room, male or female.⁸⁷¹ The *Agenda for Change* also requires opposite sex cadets to knock on the door and announce themselves, and wait for the door to be opened by the cadet occupying the room before they can enter.

5. Inspections

Cadets experience several different types of inspections while at the Academy. The most intrusive of these inspections are Morale, Welfare, and Health (MWH) inspections. The purpose of these inspections is to determine and ensure military fitness, good order and discipline, and health and safety of the Cadet Wing.⁸⁷² These inspections are normally conducted once a month by AOCs and MTLs and are usually done early in the morning. The inspectors go through the rooms, drawers, trunks, cars, bikes, and lockers of the cadets who are selected for inspection.⁸⁷³ They look for any violation of Cadet Instructions including, alcohol, drugs, or other prohibited items.⁸⁷⁴ The inspection occurs without notice on an undetermined number of rooms in each squadron.⁸⁷⁵ Each of the inspections performed in academic year 2003 have included two rooms per squadron, impacting approximately 140 cadets. Of the four inspections conducted, two were performed on the 13th of the month and two on the 14th of the month, which could contribute to allowing cadets to predict when an inspection will occur.⁸⁷⁶

At the beginning of the 2003-2004 academic year, the Training Wing changed the policy for MWH inspections. Under the previous policy, two entire squadrons were inspected, involving approximately 240 cadets. According to the Training Group, the reason for the change was so that members from every squadron feel "at risk" for an inspection verses limiting the inspection to two squadrons.⁸⁷⁷ However, statements from AOCs and MTLs indicate that the previous inspection system involved more cadets, was less predictable and was more effective.⁸⁷⁸ These inspections have only been conducted during the week, excluding the weekends where cadets have more free time and a higher propensity to have contraband in their rooms. There is evidence that alcohol is

⁸⁷⁰ AF Cadet Wing Instruction 36-2909, ¶ 3.7.4.1.8. Exhibit 12.

⁸⁷¹ AF Cadet Wing Instruction 36-2909, Training Alert 03-01 Dorm Room Doors, Exhibit 223. See 34th Training Group Operating Instruction 36-1, Procedures for Cadet Wing Morale, Welfare, and Health Inspections, Summary of Revisions.

⁸⁷² 34th Training Group Operating Instruction 36-1, ¶ 1.1.

⁸⁷³ *Id.*

⁸⁷⁴ *Id.* at ¶ 1.2. See also Memorandum for Record, Interview with Group Superintendent, Exhibit 15, at 2.

⁸⁷⁵ 34th Training Group Operating Instruction 36-1, ¶ 1.4.

⁸⁷⁶ See Inspection Reports, Morale, Welfare, and Health Inspections for November 14, 2002, January 14, 2003, February 13, 2003, and March 6, 2003, Exhibit 16.

⁸⁷⁷ E-mail Re: MWH Inspections from Deputy Commander, 34th Training Group to Working Group, (March 31, 2003) Exhibit 16. "Two rooms per squadron were randomly inspected each time. We moved to this strategy vice just doing two entire squadrons so everyone feels 'at risk.'" *Id.*

⁸⁷⁸ Statement of Group AOC, Exhibit 17; Statement of TSgt, Female MTL, Exhibit 31, at 5.

prevalent in the dorms,⁸⁷⁹ however, these inspections have been ineffective in finding alcohol.⁸⁸⁰ In one statement, a Fourth-Class cadet suggested that inspections would be more effective on the weekends than during mid-week.⁸⁸¹

6. Cadet Area Security

Only authorized individuals who have a valid need to be in the cadet area are allowed access (e.g., faculty, staff, contractors, etc.). Security Forces members man three entry control points (ECPs) that allow access to the cadet area. Each of the buildings on the lower level in the cadet area has cipher locks that require security codes to gain access. However, doors to facilities on the Terrazzo level (common outdoor area between dorms) are open twenty-four hours a day to allow cadets free and easy access to classrooms and dormitories. According to Security Forces members, this arrangement is desired by the 34th Training Wing, and the manned entry control points provide enough security to allow the doors on the Terrazzo level to remain open.⁸⁸²

While Security Forces provide patrols and security for the installation as a whole, they are discouraged from going into the cadet dormitories. The Commandant asked the Security Forces commander to limit the security forces presence in the dormitories, as it was not conducive to the dormitory environment. He also requires Security Forces personnel to advise the Training Group when they enter the cadet area.⁸⁸³ While the Training Group and Wing commanders are of the opinion that the relationship is acceptable, Security Forces personnel believe they are intentionally excluded from investigating cadet infractions that are considered crimes at other Air Force bases. Additionally, they believe that it is inappropriate to be required to seek permission from the Training Group commander to investigate crimes involving cadets.⁸⁸⁴

Security Forces personnel report they are virtually excluded from police activities in the Cadet Wing. They relate that crimes such as violent assaults and other criminal activity are handled within the Cadet Wing rather than involving Security Forces personnel, or they are notified of criminal activities well after the fact, diminishing their capability to investigate crimes.⁸⁸⁵

F. Support and Role Models for Female Cadets

The small number of women at the Academy may isolate some female cadets. Although the Academy has integrated women into the Academy's programs, the Working Group found no Academy-wide mentoring program for women or men. Absent such support female cadets may be less inclined to report instances of misconduct by male cadets.

⁸⁷⁹ Statement of VWAP Representative, 10th Air Base Wing, Exhibit 175, at 3; Memorandum for Record, Interview with Fourth-Class cadet, Exhibit 224; Statement of Cadet First Class, Exhibit 100; Memorandum for Record, Interview with Lt Col Faculty Member, Exhibit 225, at 3; Memorandum for Record, Interview with Group AOC, Exhibit 15, at 2.

⁸⁸⁰ Inspection Reports, Morale, Welfare, and Health Inspections for, November 14, 2002; Jan 14, 2003; February 13, 2003; March 13, 2003, Exhibit 16.

⁸⁸¹ Memorandum for Record, Interview with Fourth-Class cadet, Exhibit 18.

⁸⁸² Memorandum for Record, Interview with Commander, 10th Security Forces Squadron, Exhibit 226.

⁸⁸³ See Statement of Brig Gen Gilbert, Exhibit 10, at 107-108; see Statement of Commander, 10th Security Forces Squadron, Exhibit 178, at 5.

⁸⁸⁴ See Statement of Commander, 10th Security Forces Squadron, Exhibit 178, at 2-4.

⁸⁸⁵ *Id.* at 6. These concerns have been referred to the Air Force Inspector General for further review.

Of the approximately 4,000 cadets⁸⁸⁶ at the Air Force Academy, about sixteen percent are female⁸⁸⁷ and 1,200 are freshmen.⁸⁸⁸ The students are divided into squadrons of approximately 110 cadets,⁸⁸⁹ of which fifteen to twenty are female, which equates to approximately four to five female cadets per class year in each squadron. These low numbers of female cadets dispersed through the Cadet Wing can lead to feelings of isolation among them.

There are also relatively few female role models in the Training Group. For example, of the sixty-four Air Officers Commanding (AOC) and Military Training Leaders (MTL), only one AOC⁸⁹⁰ and six MTLs are women.⁸⁹¹ Female cadets may perceive the lack of role models in the areas of personal and professional development. However, it is equally important that male cadets interact with women, as male cadets will also enter the active duty Air Force as officers expected to take orders from females, command females, and work as equals with females.⁸⁹²

While some report feelings of isolation,⁸⁹³ there are mixed views on the degree of support for female cadets from other women. Some female cadets find a lack of support,⁸⁹⁴ while others were able to forge strong bonds.⁸⁹⁵ There are also indications there may be a stronger loyalty between cadets of the same class year, regardless of gender, than between female cadets from different classes.⁸⁹⁶ This may be a result of team loyalty emphasized in Academy training.

A number of graduates and instructors express the view that the Academy does not foster a culture of support and mentoring for female cadets.⁸⁹⁷ There are currently no formal mentoring

⁸⁸⁶ UNITED STATES AIR FORCE ACADEMY CATALOG, at 28 (2002-2003 ed.) Exhibit 6.

⁸⁸⁷ E-mail, Re: Academy Statistical Data, from USAFA/XPR to Working Group, April 10, 2003, Exhibit 227, at 2.

⁸⁸⁸ Statistical Summaries of USAFA Cadets and Graduates, March 2002, Exhibit 7, at 21, Table 5.

⁸⁸⁹ UNITED STATES AIR FORCE ACADEMY CATALOG, at 28 (2002-2003 ed.) Exhibit 6; and E-mail, Re: Academy Statistical Data, from USAFA/XPR to Working Group, April 10, 2003, Exhibit 227, at 2.

⁸⁹⁰ There are no female Group AOCs. See Statement of Col Slavec, Exhibit 23, at 147.

⁸⁹¹ Statement of 34th Training Wing Superintendent, Exhibit 54, at 1.

⁸⁹² Memorandum for Record, Interview with Former Academy Cadet, Exhibit 141, at 3. (male cadets need to interact with female cadets in a healthy positive way because women are an ingrained part of the Air Force).

⁸⁹³ *Id.* (Academy system isolates women); Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 230 (if female Fourth-Class cadets had more choices for roommates they could more easily create a support system).

⁸⁹⁴ Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84 (states that she hears about competition between female cadets). See also Focus Group Interview with Female First and Second-Class cadets, Exhibit 218, who view female Fourth-Class cadets as “infatuated” with male First-Class cadets. Upperclass female cadets may view junior female cadets as “competition”; Memorandum for Record, Interview with Female Graduate, Exhibit 141 (states that there is a feeling that all women must overcome all female mistakes everyday on everything...if a female cadet does not do the number of push-ups, male cadets will be tougher on all the other female cadets); Memorandum for Record, Interview with Anonymous Female Third-Class cadet, Exhibit 219 (found upperclass female cadets “unapproachable”).

⁸⁹⁵ Statement of Female Fourth-Class cadet, Exhibit 200, at 2 (informal support exists from upperclass female cadets); statement of Female Squadron AOC, Exhibit 127, at 4 (AOC who told the upperclass female cadets in her squadron to take care of the lower class female cadets); Statement of Female MTL, Exhibit 31, at 5.

⁸⁹⁶ Statement of Female Second-Class cadet, Exhibit 138 (female cadet supported by male and female cadets from her class after harassment from upperclass male); Memorandum for Record, Interview with Female Graduate, Exhibit 141, at 3.

⁸⁹⁷ Statement of Female Captain, Faculty Member, Exhibit 26; Memorandum for Record, Group Interview with Chaplains, Exhibit 220; Memorandum for Record, Interview with Female Graduate, Exhibit 141; Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 231; Statement of Female Chief Master Sergeant, Exhibit 54.

programs for female cadets.⁸⁹⁸ A female cadet support group organized by graduates, faculty and cadets called “Babes in Blue”⁸⁹⁹ was in existence for some time, but appears to have foundered.⁹⁰⁰ Brigadier General Gilbert, immediate past Commandant, stated there has been a “miserable history” of mentoring in general, for both male and female cadets, at the Academy.⁹⁰¹

The lack of female support may affect the status of sexual assault victims. Victims may feel uncomfortable, and without female support may be inhibited from reporting sexual assaults, harassment, or other gender-based offensive behavior. For example, some interviews suggest that female cadets will report sexual assaults to one of the two female chaplains over a male chaplain.⁹⁰² The desire for acceptance by the larger majority male cadet population may also inhibit female cadets from reporting.⁹⁰³ For example, some female officers and chaplains observed a desire on the part of some women to be “one of the boys,” and raising issues such as sexual assault and harassment does not allow this.⁹⁰⁴

The *Agenda for Change* contemplates the lack of female role models, mentoring opportunities, and support for women. The *Agenda for Change* requires the Commandant to establish a cadet-mentoring program, where each male and female Second-Class cadet will mentor at least one Fourth-Class cadet of the same sex and from a squadron other than their own.⁹⁰⁵

G. Experience and Qualifications of AOCs and MTLs

1. Air Officers Commanding

Interviews with senior leadership indicated general dissatisfaction with the experience and command qualifications of officers being assigned as Air Officers Commanding (AOCs). Lieutenant General Dallager believes that the AOCs did not represent “the top five or ten percent individuals,” and was concerned there was not a balanced representation of career fields among AOCs.⁹⁰⁶ Even earlier, Brig Gen Welsh had seen the qualifications of AOCs as an issue, attributing

⁸⁹⁸ An official sponsorship program open to cadets of all years and both genders does exist. Faculty members, permanent party members, and civilians serve as sponsors. Brochure, Cadet Sponsorship Program 2002-2003, Exhibit 232, at 2.

⁸⁹⁹ Talking Paper on Academy Women’s Networking Group (“Babes in Blue”), Exhibit 40.

⁹⁰⁰ Statement of Brig Gen Gilbert, Exhibit 10, at 33; Statement of Chief, Human Relations Division, Center for Character Development, Exhibit 110 (Chief of Human Relations at the Center for Character Development, which teaches human relations to all cadet classes, did not know of its existence).

⁹⁰¹ Statement of Brig Gen Gilbert, Exhibit 10, at 99.

⁹⁰² Statement of Chaplain, 10th Air Base Wing, Exhibit 30, at 3.

⁹⁰³ Memorandum for Record, Interview with Officer from Counseling Center, Exhibit 27 (states that females stick with guys versus other girls who complain or report).

⁹⁰⁴ Memorandum for Record, Group Interview with Female Officers, Exhibit 233, at 3; Memorandum for Record, Group Interview with Chaplains, Exhibit 220; *see also* Statement of Female Chaplain, 10th Air Base Wing, Exhibit 30 (believes that female cadets don’t support those who report assault or harassment because female cadets think ‘you are making us look not the same’ as the male cadets.)

⁹⁰⁵ *Agenda for Change*, Exhibit 4.

⁹⁰⁶ Statement of Lt Gen Dallager, Exhibit 71, at 10. Lieutenant General Hosmer shared this concern and even believed that there was a link between weakness of leadership and sexual assault, stating that poor leadership was a “core issue underlying many of these problems, sexual assault being one of them.” He said, “I think deterioration in quality of command and confidence and trust in command will affect both the likelihood that something will happen and it affects the likelihood that, if it happens, you’ll learn about it, and if it happens, the victim is likely to put her trust in the command system to do as good a job as can be done, of achieving justice and resolving that very difficult tension between justice and privacy.” Statement of Lt Gen Hosmer, Exhibit 45, at 39-40.

it in part to lack of command experience. He stated that the majority of the AOCs under his command had never supervised more than ten people. Brigadier General Welsh felt this problem with lack of command experience also extended to the qualifications of the four Group AOCs, who would each supervise 1,100 personnel.⁹⁰⁷ The immediate past Training Group commander, Col Slavec, noted that a junior captain who only has had one or two assignments is hampered in his or her ability to act as a role model for cadets.⁹⁰⁸

Senior leadership made efforts to correct the problem by requesting assistance from the Air Force Personnel Center (AFPC) on assignment of AOCs. Lieutenant General Dallager reports trying to work with AFPC, and being denied requests for specific, very high quality individuals.⁹⁰⁹ Lieutenant General Dallager related that he presented the issue at CORONA⁹¹⁰ in the Fall of 2000, and again in 2002,⁹¹¹ (apparently associated with describing the need for more flying rated AOCs) highlighting the fact that the quality of the AOCs as role model was related to the standard of the Academy graduates produced.⁹¹² The Assistant Vice Chief of Staff of the Air Force shared his concern and supported the Academy's efforts for obtaining highly qualified AOCs as role models for cadets.⁹¹³ Prior to this, Brig Gen Welsh had been Commandant when Dean Wagie had started the AOCs' Master's Program, which involved officers undergoing a one year program prior to taking on duties as an AOC; the program was drastically reduced the very next year and this was a source of frustration to Brig Gen Welsh.⁹¹⁴ It was subsequently terminated, although the program will be reinstated under the *Agenda for Change*.⁹¹⁵

Other than performance reports, which do not lend themselves to statistical analysis, there are few quality indicators available to accurately compare qualifications of AOCs. Regardless, we found some demographic data that shows AOCs are at or above the Air Force average in quality.⁹¹⁶

While the Air Force average for officers with flight commander experience is forty-five percent, sixty-five percent of AOCs have flight commander experience.⁹¹⁷ While the Air Force average for rated officers (Pilot, Navigator or Air Battle Manager) is forty-three percent, fifty percent of AOCs assigned to the Academy are rated.⁹¹⁸ AOCs achieved distinguished graduate

⁹⁰⁷ Statement of Brig Gen Welsh, Exhibit 64, at 11.

⁹⁰⁸ Statement of Col Slavec, Exhibit 23, at 149-150.

⁹⁰⁹ Statement of Lt Gen Dallager, Exhibit 71, at 19.

⁹¹⁰ CORONA refers to three-day conferences hosted by the Secretary and the Chief of Staff, generally held three times a year for the corporate Air Force leadership to discuss and decide on a wide variety of issues. Typical attendees include the Secretary, Under Secretary, and Assistant Secretaries of the Air Force, the General Counsel, all Air Force four-star generals, Major Command commanders; the Commander, Air National Guard; the Surgeon General, senior Air Force leaders from various disciplines, Washington area three-star generals, and the Superintendent of the Air Force Academy. Other senior Air Force commanders at the general officer level attend one of the three meetings each year in lieu of the Assistant Secretaries, Washington area three-stars, functional leaders and the Air Force Academy Superintendent.

⁹¹¹ Statement of Lt Gen Dallager, Exhibit 71, at 17, 19, and 188-189; Statement of Brig Gen Gilbert, Exhibit 10, at 28-29; and Memorandum for Record, Interview with Lt Gen Wehrle, Exhibit 234.

⁹¹² Statement of Lt Gen Dallager, Exhibit 71, at 17.

⁹¹³ Memorandum for Record, Interview with Lt Gen Wehrle, Exhibit 234.

⁹¹⁴ Statement of Brig Gen Welsh, Exhibit 64, at 13.

⁹¹⁵ *Agenda for Change*, Exhibit 4.

⁹¹⁶ In April 2003, there were forty-four AOCs assigned to the Academy. Thirty-six of the AOCs are squadron level (Captains and Majors) and eight are group level AOCs (Lieutenant Colonels). AOC Quality Indicators, HQ AFPC/DPS, Analysis Branch, Exhibit 235.

⁹¹⁷ *Id.* Based on same rank comparison.

⁹¹⁸ *Id.*

status from Squadron Officer School at 14% compared to the Air Force average of 8%.⁹¹⁹ AOCs receive Intermediate Service School candidacy at 30%, which is consistent with the Air Force average.⁹²⁰ Lastly, AOCs are promoted below the zone (early) to Major at 1.94% compared to the Air Force average of 1.87%.⁹²¹

While helpful in understanding the qualifications of serving AOCs, this information does not resolve the perceived need to be able to hand-select AOCs from the top echelons of officers, and for qualifications unique to the position.

2. Military Training Leaders

Senior leadership also expressed some concern with the qualifications of NCOs assigned as Military Training Leaders (MTLs). In general there was less concern with MTL qualifications than with AOCs, but there was still a sense of needing more qualified individuals for the positions.⁹²² Brigadier General Gilbert felt that some MTLs also lacked experience, and that the combination of an inexperienced AOC and an inexperienced MTL was problematic.⁹²³ When the MTL program was originally implemented, hand-picked master sergeants filled the positions; now MTL assignments are given to technical sergeants and staff sergeants.⁹²⁴ Consequently, the experience level of the MTLs now is less than it was originally, when the MTLs had a great deal of experience in discipline and supervision.⁹²⁵ There is currently circulating a manning document that proposes considering senior airmen as MTLs, but the Academy has been able to negotiate substituting staff sergeants into senior airmen billets.⁹²⁶

3. AOC and MTL Training

AOCs go through a single two-week training program held the summer before the new AOCs assume their duties.⁹²⁷ A typical AOC assignment is a two-year tour of duty,⁹²⁸ and there is no refresher training after the initial course.⁹²⁹ The training course includes briefings by support agencies, CASIE,⁹³⁰ and the Inspector General's office.⁹³¹ The training course given to AOCs/MTLs simply familiarizes them with what resources are available. For example, no training

⁹¹⁹ *Id.*

⁹²⁰ *Id.* (Percentage of recent AOCs (1998-2003) who met the Line of the Air Force promotion board in the primary zone for majors from 1995-2002 and received ISS Candidacy.) This includes members who had AOC experience from 1998-2003 but were not currently AOCs at the time of the board, along with members who met the board and later became AOCs and members who met the board while they were AOCs.

⁹²¹ *Id.* (Percentage of those who met the below the primary zone major's board from 1992-1998 and were promoted.) Below the zone promotions were eliminated after the 1998 major promotion board, so data was used for the years preceding this change.

⁹²² Statement of Lt Gen Dallager, Exhibit 71, at 7.

⁹²³ Statement of Brig Gen Gilbert, Exhibit 10, at 32.

⁹²⁴ Statement of 34th Training Wing Superintendent, Exhibit 54, at 4.

⁹²⁵ *Id.*

⁹²⁶ *Id.*

⁹²⁷ Statement of Group AOC, Exhibit 236, at 1.

⁹²⁸ Statement of Squadron AOC, Exhibit 34.

⁹²⁹ *Id.*

⁹³⁰ See this Report, Section III.C., Prevention and Awareness Training.

⁹³¹ Though the IG brief was inadvertently omitted from the AOC/MTL training in the summer of 2002, a makeup session was later conducted: Statement of former Academy Inspector General, Exhibit 237.

is given to AOCs or MTLs on the concept of amnesty for victims of sexual offenses for infractions they themselves may have committed.⁹³²

Senior leadership took action to provide AOCs and MTLs further training in the summer of 2002. The Academy Character Enrichment Seminar (ACES) is a program developed by the HR Department and presented to First-Class cadets. In August 2002, at Gen Gilbert's direction, a special ACES for AOCs/MTLs was presented as a series of case studies for participants to talk through.⁹³³ The case studies were based on actual scenarios faced by previous AOCs and MTLs and included, as a teaching aid, the action taken by the permanent party who faced the situation originally.⁹³⁴ The scenarios and the actions taken by the AOCs/MTLs revealed a range of cadet misconduct, in some cases overlooked by the permanent party leadership.

The *Agenda for Change* implements changes to the selection process of AOCs, mandating enhancement to the AOC assignment process to ensure that selectees are superior officers. The *Agenda* requires all future AOCs to be majors or major-selects; to be chosen by central selection board established by the Air Force Personnel Center; to receive one year of graduate education resulting in a Master's degree in counseling or similar area prior to a two-year AOC assignment; and, once selected, to live on-base.⁹³⁵

⁹³² Statement of Squadron AOC, Exhibit 127 (doesn't know what amnesty means); Statement of Group AOC, Exhibit 236 (if a victim approached him, he would call his boss to find out about amnesty).

⁹³³ Statement of Brig Gen Gilbert, Exhibit 10, at 22.

⁹³⁴ Academy Character Enrichment Seminar for AOCs/MTLs, Exhibit 119.

⁹³⁵ *Agenda for Change*, Exhibit 4.

V. Issues Related to the Academy's Response to Sexual Assault

The Working Group identified a number of collateral issues associated with sexual assault at the Academy. They are discussed below, grouped within the following topic areas: Air Force Office of Special Investigations; 10th Security Forces Squadron; Role of Legal Offices Advising Commanders; Release of Information to Victims and Others; Victim Infractions Associated with Reporting of Sexual Assault; and Specific Cases Involving Administrative Responses.

A. Air Force Office of Special Investigations

The Air Force Office of Special Investigations (AFOSI) initiates and conducts independent investigations of serious crimes, including investigations of alleged sexual assault.⁹³⁶ The AFOSI Detachment supporting the Academy is Detachment 808, which typically has seven to eight agents assigned.⁹³⁷ AFOSI conducted fifty-two investigations of alleged sexual assault involving a cadet victim or cadet suspect relating to incidents alleged to have occurred between January 1, 1993, and December 31, 2002.⁹³⁸

1. AFOSI's Role Under the Academy's Reporting Process

USAFA Instruction 51-201 states that anyone to whom a victim reveals that he or she has been assaulted should "encourage the victim to report the incident to law enforcement and/or command authorities as appropriate."⁹³⁹ In addition, USAFA Instruction 51-201 advises individuals to whom a cadet reports a sexual assault to advise them of the following reasons to report the sexual assault to the AFOSI:

Reporting to AFOSI can benefit you directly, as well as, help to prevent others from being raped. Reporting the assault may be a way to regain your sense of personal power and control. It enables you to do something about the violent crime that was committed against you. Reporting also helps to ensure that you receive the most immediate and comprehensive professional assistance that is available. The AFOSI will assist you in getting specialized medical care, gathering and preserving evidence, and resolving concerns about your

⁹³⁶ See Air Force Instruction 71-101V1, ¶ 1.1. This is done pursuant to the authority in Public Law 99-145. Among the criminal investigations the AFOSI will undertake are: aggravated assaults involving serious bodily injury, serious child abuse, all murders, voluntary and involuntary manslaughter, suicide and deaths by unknown causes except for vehicle accidents (except for those involving hit and run), extortion, kidnapping, attempted bombings, hijackings and terrorist acts. AFOSI also investigates sex offenses including allegations of rape, sodomy, carnal knowledge, child molestation or cases involving serious bodily harm. Air Force Instruction 71-101V1, Attachment 2B. Security Forces may investigate other crimes, consistent with laws and regulations, when the installation's AFOSI Commander and Chief of Security Forces agree. Air Force Instruction 71-101V1, ¶ 1.3.2. The AFOSI Detachment 808 Commander and 10th Security Forces Squadron Commander stated that AFOSI investigates cases of serious sex offenses such as sexual assaults and indecent assaults. See Memorandum for Record, follow-up interview with AFOSI Detachment Commander and 10th Security Forces Squadron Commander, Exhibit 238.

⁹³⁷ See Statement of AFOSI Detachment Commander, Exhibit 177 at 5.

⁹³⁸ See this Report, Section VI.F., Review of Sexual Assault Cases.

⁹³⁹ USAFA Instruction 51-201, ¶ 2.8, Exhibit 55. Paragraph 2.8.1.1. notes if the victim is willing, the individual to whom the cadet victim reported to, "should immediately notify [Air Force Office of Special Investigations]." *Id.* at ¶ 2.8.1.1. USAFA Instruction 51-201, Attachment 3, ¶ A.3.4. states, "Law enforcement investigations and the military justice system are designed to promote good order and discipline in the Armed Forces by assembling all the facts and circumstances surrounding an offense. In order to accomplish this goal, prompt cooperation with medial personnel, law enforcement officers and military authorities is extremely important." *Id.*

personal safety and security. Reporting and prosecuting the assailant are essential to the prevention of rape and the protection of other potential victims. If a rape is not reported, the assailant cannot be apprehended. Thus, the risk to others is increased.⁹⁴⁰

Although AFOSI is the primary agency for investigation of sexual assault allegations under the Academy's sexual assault program,⁹⁴¹ the victim may choose to report confidentially to CASIE or the Cadet Counseling Center and not invoke investigative or other official action.⁹⁴² AFOSI has recently had no relationship with CASIE or the Cadet Counseling Center except when AFOSI briefs CASIE volunteers at the beginning of each school year on the duties of AFOSI, and when CASIE or the Cadet Counseling Center contacts AFOSI to discuss a sexual assault "hypothetical" or to arrange for a victim to come forward to AFOSI to report the alleged assault.⁹⁴³ In fact, in recent years, the current and former detachment commanders were unaware of any victim going to AFOSI without first going to CASIE or the Cadet Counseling Center.⁹⁴⁴ The net result of the Academy-unique procedure is that AFOSI may not be aware of all sexual assaults and therefore may not have investigated allegations that ordinarily fall within its investigative purview.

Under the Academy's process, a sexual assault victim may decline to report altogether, or may come forward to AFOSI and discuss her case in the form of a hypothetical situation to ask questions about the process.⁹⁴⁵ An AFOSI agent talks to the victim, who may be accompanied by a victim advocate.⁹⁴⁶ In a "hypothetical," an AFOSI agent would talk about the process and would not investigate. However, if the victim alleged she had been raped, it would no longer be a discussion merely of the process and AFOSI would need to investigate the alleged assault.⁹⁴⁷ In addition to the "hypothetical" cases AFOSI deals with, there are sexual assault victims who report directly to CASIE or the Cadet Counseling Center and never request a criminal investigation of the case.

This unique system of "nonreporting" at the Academy is different from standard procedures adhered to elsewhere in the Air Force.⁹⁴⁸ The AFOSI is responsible for investigating "crimes

⁹⁴⁰ USAFA Instruction 51-201, Attachment 7, ¶ A7.2., Exhibit 55.

⁹⁴¹ *Id.* at ¶ 2.7 and ¶ 2.8.2. If the victim is willing to make a formal complaint, the person the cadet victim reported to should immediately notify AFOSI. *Id.* at ¶ 2.8.1.1.

⁹⁴² *Id.* at ¶ 2.8.1.2.

⁹⁴³ See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 4; See generally Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239.

⁹⁴⁴ See Statement of former AFOSI Detachment Commander, Exhibit 176, at 2; See Statement of AFOSI Detachment Commander, Exhibit 177, at 3.

⁹⁴⁵ See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2; See Statement of AFOSI Detachment Commander, Exhibit 177, at 6; See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239.

⁹⁴⁶ See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2; See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, 0562-d, at 2. *Contra*: The Victim Advocate Coordinator stated, "[n]ormally [AF]OSI would rather not let them have anybody in with them [victim]. They feel that it is better for the investigation or questioning process . . . It's not that they say you can't go in, it's just that you kind of know that . . . they would rather us not go in." Statement of Victim Advocate Coordinator, Exhibit 50, at 36.

⁹⁴⁷ See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239. The current Detachment Commander stated that he would discuss the process with a cadet but if she indicated she was a victim of an assault, he would be obliged to begin an investigation. See statement of former AFOSI Detachment Commander, Exhibit 176, at 2. The former AFOSI Detachment Commander stated that if the individual stated she had been raped, he "would have to go forward with [an investigation]."

⁹⁴⁸ AFOSI is governed by Air Force Policy Directive 71-1, Air Force Instruction 71-101, Volume 1; Air Force Office of Special Investigations Manual 71-122 and Air Force Office of Special Investigations Handbook 71-124.

against people,” including cases of sexual assault.⁹⁴⁹ Additionally, Air Force commanders are required to refer to AFOSI on all criminal matters and offenses for which the AFOSI is responsible.⁹⁵⁰ AFOSI procedures require investigation of all allegations of rape.⁹⁵¹

2. Perceptions of AFOSI.

A number of cadets and Counseling Center staff reported that cadets have a negative perception of AFOSI.⁹⁵² Interviews of CASIE volunteers trained by the Cadet Counseling Center indicated a tendency to convey negative perceptions of AFOSI to cadets.⁹⁵³ The Cadet Counseling Center Victim Advocate Coordinator also believed the perception of the AFOSI among the cadets was bad,⁹⁵⁴ although she indicated that she personally had a good working relationship with the former AFOSI detachment commander and two female agents.⁹⁵⁵

The current detachment commander was not aware of any negative perceptions of AFOSI and no complaints were reported to him.⁹⁵⁶ The former detachment commander remembered a

⁹⁴⁹ Air Force Mission Directive 39, ¶ 3.2. Rape is a crime against a person (female). UCMJ, Article 120. AFOSI is statutorily empowered to initiate and conduct criminal investigations. Public Law 99-145 § 1223 (99 Stat. 728). Once AFOSI has opened an investigation, only the Secretary of the Air Force (SECAF) through the Air Force Inspector General (SAF/IG) may direct the AFOSI to delay, suspend, or terminate an investigation. Air Force Policy Directive 71-1 ¶ 7.1 (July 1, 1999).

⁹⁵⁰ Air Force Policy Directive 71-1, ¶ 7.5, does not define the term “Air Force Commander.” However, Air Force Policy Directive 71-1 references DoD Instruction 5505.3, Initiation of Investigation by Military Criminal Investigative Organizations (July 11, 1986). DoD Instruction 5505.3 defines “commander” as “a commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a ‘command’.” DoD Instruction 5505.3, ¶ 3.1.

⁹⁵¹ Air Force Office of Special Investigations Manual 71-122, ¶ 2-3 and ¶ 2.3.3.1.2.

⁹⁵² Among the reported negatives are that the AFOSI has gone to an AOC and divulged information that was meant to be confidential. Statement of First-Class cadet, Exhibit 101, at 2. *See also* Statement of Second-Class cadet, Exhibit 109, at 4 (the “scary [AF]OSI people” are not going to be very discrete about the situation); Memorandum for Record, Interview with Victim Support Group, Exhibit 137 (the AFOSI questions the victims in a way that is not best suited for the victim and that AFOSI was “apathetic.”); and Memorandum for Record, Interview with Second-Class cadet, Exhibit 240, at 2 (repeating a rumor that a rape kit “disappeared”).

⁹⁵³ *See* Statement of First-Class cadet, Exhibit 101, at 2. One cadet, who had served as a CASIE volunteer for about three years, stated that he tells victims the investigation is an intrusive process and “OSI doesn’t work for you. They will do what’s in the best interest of Air Force.” In addition, the Victim Advocate Coordinator stated, “OSI is not there to nurture you, it’s not there to be your friend. They’re going to ask you questions in difficult ways to make sure they’re getting the right answers.” *See* Statement of Victim Advocate Coordinator, Exhibit 50, at 32-33.

⁹⁵⁴ Statement of Victim Advocate Coordinator, Exhibit 50 at 33. “I said, ‘There’s not going to be hot lights, they’re not going to whip you, they can’t hit you’ because that’s the perception that a lot of victims have. They’re scared to death.” *See* Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171. *See also*, Exhibit 275 (cadet reports negative perception of AFOSI).

⁹⁵⁵ Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171; *See* Statement of Victim Advocate Coordinator, Exhibit 50, at 103. She recalled one negative personal experience with the AFOSI. The young lady arrived with her squadron commander who was also female and indicated that she did not want to report the incident to AFOSI. The Victim Advocate Coordinator tried to get the victim to report the assault but the victim was not interested. The victim did allow the Victim Advocate Coordinator to take pictures of the bruises. The Victim Advocate Coordinator used the cadet clinic camera and took pictures of the bruises. She did not take a picture of the victim’s face and did not have a ruler to use in the pictures. She took the film out of the camera and kept it with her at all times. She took the film home with her and brought it back to work with her. A couple of weeks later the victim reported the assault to AFOSI. According to the Victim Advocate Coordinator, AFOSI members were upset when they learned she had taken pictures. The Victim Advocate Coordinator handed the film over to AFOSI and they developed it. *See* Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 241, at 1.

⁹⁵⁶ *See* Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242, at 2. *See* Statement of Former AFOSI Detachment Commander, Exhibit 176, at 3.

negative perception when he went to brief the CASIE volunteers at the beginning of the academic year a few years ago, but he believed it had been cleared up by the end of the discussion.⁹⁵⁷

Interviews revealed that either consciously or not, some volunteers and/or the victim advocates may have discouraged cadet victims from reporting such incidents to law enforcement authorities.⁹⁵⁸ An interview with a volunteer who briefs cadets and possible victims (a member of CASIE), indicated that it was possible that as a CASIE volunteer there might be at least the suggestion to cadet victims that reporting the assault to law enforcement officials would not necessarily be a pleasant experience. Although this particular CASIE volunteer never indicated that she made the following statements to any cadet victims she interacted with, she did refer to the AFOSI as the “scary AFOSI people.” In addition, when discussing the pros of the Academy’s CASIE reporting system versus the traditional Air Force reporting systems she stated:

If I had to go and talk to the scary [AF]OSI people and they are not going to be very discreet about the situation then things will not go very well. That prospect is very scary, because you already had this traumatic thing happen to you and now you know everybody else is finding about it. This is called re-victimization; it’s something that any victim of sexual assault can go through.⁹⁵⁹

In addition to some of the CASIE volunteers, the Victim Advocate Coordinator may have inadvertently discouraged cadet victims from reporting their sexual assault to law enforcement officials by the manner in which she informs cadet victims of their reporting options. For example, the Victim Advocate Coordinator advises cadet victims that they can “either continue with counseling and not tell anybody about the sexual assault or there’s the avenue where you can tell somebody about the sexual assault through legal channels (i.e., going to law enforcement, going to AFOSI, and then your AOC finding out, or if you wanted to go to a chaplain or whatever).”⁹⁶⁰ In addition, the Victim Advocate Coordinator advises cadet victims that “OSI is not the most wonderful experience they will ever have in their whole entire life, but that they view things different than I do.”⁹⁶¹

⁹⁵⁷ See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 4.

⁹⁵⁸ Specifically, one CASIE volunteer stated that when he advises cadet victims he tells them the investigation is an intrusive process. He explains the legal process and tell them they will lose some of their confidentiality and that the AFOSI notifies the officer chain of command, not the cadet chain of command, but all they tell the command is that the victim is involved in an investigation, but not the nature of the investigation. Statement of Male First-Class cadet/CASIE volunteer, Exhibit 101, at 2. This CASIE volunteer tells the victim that AFOSI doesn’t work for the victim and they will do what’s best interest of Air Force. *Id.* In addition, this CASIE volunteer provides the cadet victim with insight as to the judicial aspect of reporting specifically, with regard to Article 32 hearings. The CASIE volunteer tells cadet victims that she will have to testify and that not all the evidence of the assault is required to be submitted at the Article 32. *Id.* This particular CASIE volunteer does suggest to the victim that a rape kit can be saved at Security Forces which can allow the victim time to think about the investigation. *Id.*

⁹⁵⁹ Statement of Female Second-Class cadet and CASIE Volunteer, Exhibit 109, at 4.

⁹⁶⁰ Statement of Victim Advocate Coordinator, Exhibit 50, at 23.

⁹⁶¹ *Id.* at 32. The Victim Advocate Coordinator attempts to explain to cadet victims the difference in her way of interacting with them as opposed to how the AFOSI may interact with them. For example, she stated that when dealing with a cadet victim she tells the individual, “I may ask you something very nicely. I am touching your shoulder . . . I’m nurturing.’ I say, ‘OSI is not there to nurture you, it is not there to be your friend. They’re going to ask you questions in different ways to make sure they’re getting the right answers. They need to know every little itsy-bitsy part of it because they’re trying to create a story.’ I said, ‘There’s not going to be hot lights, they’re not going to whip you, they can’t hit you’ because that’s a perception a lot of victims have. They’re scared to death.” *Id.* The Victim Advocate Coordinator may be presenting a more ominous picture of AFOSI than she realizes. See Memorandum for Record, Meeting with Former Academy Cadet About Sexual Assault, Exhibit 275, at 2, in which a cadet victim stated that

Finally, some witnesses expressed a perception that AFOSI would provide information obtained during its investigation to assist in cadet discipline against the victim or witnesses to an alleged act. One cadet interviewed expressed strong feelings toward AFOSI and believed that the matters presented to AFOSI were not confidential. She believed that when AFOSI learned of cadet misconduct during interviews with witnesses, AFOSI reported the misconduct to Academy leadership, and in turn, the cadet received a disciplinary “hit.” Her belief was based on the experience of her roommate who had reported an incident.⁹⁶² The Cadet Counseling Center’s Victim Advocate Coordinator stated there were instances in which the AFOSI told cadets they were not interested in the ancillary misconduct so the witnesses spoke freely. The information was recorded in the AFOSI Report of Investigation (Report). The witnesses were subsequently punished for the misconduct.⁹⁶³

Both the current and former detachment commanders indicated that AFOSI is not interested in cadet misconduct that is not part of a criminal investigation they undertake.⁹⁶⁴ However, admitted misconduct will be put in the AFOSI report, as part of the investigation, if relevant.⁹⁶⁵ AFOSI does not separately forward ancillary misconduct to Academy leadership.⁹⁶⁶ An expression of lack of interest in ancillary misconduct, without explanation that it might nonetheless be referenced in the report going to the commander, could account for cadets or others perceiving that they had been misled.

3. Experiences Related by Victims

Several complaints have surfaced concerning the manner in which the AFOSI treated cadet sexual assault victims. These complaints have come from an active duty officer, the Victim Advocate Coordinator, a cadet, and a private, non-profit community organization.⁹⁶⁷ As specific

“cadets are counseled that OSI is a ‘monster’...” AFOSI Manual 71-122, ¶ 2.3.3.2.3 specifically instructs agents to “[e]xplain to the victim that completing certain investigative steps (i.e., collecting and preserving evidence, obtaining basic information) is important to a successful investigation and maximizes the chances of apprehending and successfully prosecuting the perpetrator.”

⁹⁶² See Memorandum for Record, Interview with Fourth-Class cadet, Exhibit 37, at 1.

⁹⁶³ See Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171. The witness did not give specific cases to support this opinion.

⁹⁶⁴ The Working Group staff team did not speak to specific AFOSI case agents, as the Air Force Inspector General is conducting a review of all AFOSI investigation reports for cadet cases between 1993 and 2002, and specific allegations concerning AFOSI agents.

⁹⁶⁵ See Statement of AFOSI Detachment Commander, Exhibit 177 at 3.

⁹⁶⁶ *Id.*

⁹⁶⁷ The complaints made against AFOSI include allegations that AFOSI was immediately confrontational, accused a victim of lying, insinuated that a victim dreamed the assault, told a victim that going to court would hurt her as much as it would the alleged assailant, and that an AFOSI agent made a comment to the TESSA representative to the effect that there were no sexual assaults. The TESSA representative stated that she had been called to the Academy to respond to an incident of domestic violence as a victim advocate. While handling that case, she made a comment to an AFOSI agent about sexual assaults on cadets. She stated that the agent replied, “There are no sexual assaults. They can’t make it in a man’s world so they cry rape to make up for their own deficiencies.” See Memorandum for Record, Interview with TESSA Personnel, Exhibit 243 at 2; Statement of Captain, Faculty Member, Exhibit 26, at 2; Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 244 (assault occurred in June 2001 and reported to AFOSI two days later); Memorandum for Record, Interview with Victim Advocate Coordinator, Exhibit 171; Statement of Victim Advocate Coordinator, Exhibit 50, at 36-37. One cadet stated she felt her meeting with the AFOSI was an interrogation rather than a fact-finding interview. See Statement of Two First-Class Female Cadets, Exhibit 136, at 1 (reported incident to AFOSI in October 2001). According to the AFOSI Working Group member, AFOSI investigates allegations of criminal activity in order to impartially determine the facts and circumstances of an allegation brought to

concerns about AFOSI are being addressed by the Air Force Inspector General, we cannot comment on the validity of these specific allegations but rather address them in a general context.

Interviews with the current and immediate past detachment commanders indicate that neither commander personally received any complaints about AFOSI agents handling sexual assault cases nor were they aware of any agents acting as described.⁹⁶⁸ The former detachment commander had heard second hand of a complaint raised by the mother of one of the alleged victims concerning what she considered to be rude treatment of herself.⁹⁶⁹ The former detachment commander spoke personally to the mother and asked if she had concerns and the mother denied any problems. He is aware, however, that she made complaints to others. In a separate matter, Brig Gen Welsh, a former Commandant, notified the former detachment commander that a father had complained about the AFOSI not providing the father with information.⁹⁷⁰ The former detachment commander stated he wanted to talk to the father about the case, but the daughter was of age and refused to give consent for the AFOSI to talk to the father about the facts of the case.⁹⁷¹

The former detachment commander related that for “hypothetical” cases, he always met personally with the victim. If the victim was willing to come forward, she usually came with a victim advocate. If a victim advocate attended, that person remained in the room. He let the victim ask questions in a hypothetical context. However, if the victim said that she had been “raped,” the case became a criminal investigation rather than a “hypothetical.”⁹⁷² He personally guaranteed the victim that she would be treated with dignity and respect. He always gave the victim his business card and his home and office phone numbers so she could contact him if she felt she was not being treated correctly. They then talked about the case and discussed all aspects of the case from an objective standpoint. He attempted to dissuade fears and made sure she understood all of the process and what reporting the sexual assault encompassed. He touched on the investigative aspects and on the legal aspects. He told the victim that AFOSI did not decide what to do with the case and that it would be forwarded to the 10th Air Base Wing Legal Office after AFOSI collected the facts. He did not comment on the legal process and stated he always stressed respect and dignity for each victim.⁹⁷³

According to AFOSI instructions, agents are trained to use extreme care in sexual assault cases to ensure investigative procedures do not cause or aggravate any emotional harm to the

the attention of a detachment. AFOSI also investigates allegations of unprofessional agent conduct. Relative to the statement attributed by the TESSA representative to an unnamed AFOSI agent, AFOSI reviewed all information pertaining to investigations of its personnel and had no record of a complaint regarding improper conduct or agent insensitivity during a sexual assault investigation at the Academy. Any such complaints would be fully investigated by AFOSI/IG in accordance with standard AFOSI procedures. This matter has been referred to the Air Force Inspector General. Working Group (SAF/IG) comment.

⁹⁶⁸ See Statement of Former AFOSI Detachment Commander, Exhibit 176 at 3; See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, 0562-d, at 2.

⁹⁶⁹ See Memorandum for Record, Follow-up Interview with Former AFOSI Detachment Commander, Exhibit 245.

⁹⁷⁰ See Statement of Brig Gen Welsh, Exhibit 64, at 70-71.

⁹⁷¹ See Memorandum for Record, Follow-up Interview with Former AFOSI Detachment Commander, Exhibit 245.

⁹⁷² See Statement of former AFOSI Detachment Commander, Exhibit 176, at 2. “I would let the victim ask questions in a hypothetical case, however if the victim ever said ‘I was raped’ then I would have to go forward with that.” Discussion with current Detachment Commander indicated that AFOSI will discuss the investigative process with cadets but if the cadet indicates that a sexual assault or rape occurred, the victim will be asked if she is reporting a crime. If she states it is a hypothetical situation, a discussion of the process can continue. However, if a crime is reported, AFOSI will begin an investigation. See Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239.

⁹⁷³ See Statement of Former AFOSI Detachment Commander, Exhibit 176, at 2.

victim.⁹⁷⁴ If complaints were made to AFOSI about an agent's behavior, the complaint would be reviewed by the detachment commander who would meet with the agent. The AFOSI Inspector General can also investigate complaints of AFOSI misconduct.⁹⁷⁵ In this situation, the AFOSI Detachment Commander could not review any actions because he was unaware of any complaints about AFOSI.

4. Compliance with AFOSI procedures

Initial analysis of AFOSI-investigated allegations of sexual assault over the last ten years reveals no significant anomalies in case investigations, with the possible exception of one case in which AFOSI did not open a full-fledged investigation, relying instead upon the verbal legal opinion of the 10th Air Base Wing Staff Judge Advocate that “on its face” the allegation did not amount to rape.⁹⁷⁶ In that case, the victim was compelled by the Academy Superintendent (override) to report the incident, which allegedly occurred two years earlier. AFOSI took her written statement.⁹⁷⁷ There was no physical evidence to collect due to the length of time that passed since the incident. AFOSI contacted the 10th Air Base Wing Staff Judge Advocate and requested a review of the victim's statement to determine the viability of a conviction before they opened the investigation on the case.⁹⁷⁸ The 10th Air Base Wing Staff Judge Advocate reviewed the victim's statement and opined that the allegation, if true, did not establish a *prima facie* case of rape.⁹⁷⁹ It was implied that an investigation would not be opened. AFOSI documented the circumstances in the event more evidence surfaced, but no investigation was opened.⁹⁸⁰ The detachment commander said he did not open an investigation because of the opinion of the 10th Air Base Wing Staff Judge Advocate that the facts failed to establish a *prima facie* case of rape. He also said he did not contact a Forensic Science Consultant because he was a former consultant himself.⁹⁸¹ According to AFOSI instructions, AFOSI is required to conduct an investigation on every *allegation* of rape.⁹⁸² Specifically, AFOSI should “investigate all rape allegations to logical conclusion” and should “not report them as a zero or information file.”⁹⁸³ AFOSI Headquarters has interpreted this instruction to mean that opening an investigation on a clear allegation of rape is not discretionary.⁹⁸⁴ The Inspector General has directed that AFOSI further clarify policy regarding this issue in their directives.⁹⁸⁵ A review of the victim's statement, by the lawyers on the Working Group, indicated

⁹⁷⁴ Air Force Office of Special Investigations Manual 71-122, ¶ 2.3.3.

⁹⁷⁵ Air Force Office of Special Investigations Instruction 71-138, ¶ 1. *See also* Air Force Instruction 90-301, Inspector General Complaints, ¶1.53.5 and Table 2.7, Rule 5.

⁹⁷⁶ *See* Statement of AFOSI Detachment Commander, Exhibit 177, at 3-4; *see* Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242, at 1-2; *see* Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 4-5.

⁹⁷⁷ AF Form 1168, Witness Statement of Female Cadet, Sept.19, 2002, Exhibit 217.

⁹⁷⁸ *See* Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 4-5, *see also* Statement of AFOSI Detachment Commander, Exhibit 177, at 4. The AFOSI Detachment Commander stated “[W]e took a statement and went to coordinate with the legal office. Legal said there was no crime here based on the information she provided. We documented the information but there wasn't a full investigation.” Exhibit 177, at 4.

⁹⁷⁹ *See* Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 5.

⁹⁸⁰ *See* Statement of AFOSI Detachment Commander, Exhibit 177, at 4. He stated, “On [the cadet] we got information, coordinated with legal and then documented so if any other info came forward in the future we would have that to look back on as evidence.” *See* Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242, at 2.

⁹⁸¹ *See* Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 242, at 2.

⁹⁸² Air Force Office of Special Investigations Manual 71-122, ¶ 2-3.3 and the subsequent paragraphs provide guidance.

⁹⁸³ Air Force Office of Special Investigations Manual 71-122, ¶ 2.3.3.1.2.

⁹⁸⁴ Working Group Member (AFOSI) comment.

⁹⁸⁵ Working Group Member (Inspector General) comment.

that an investigation should be accomplished. The General Counsel recommended and the Secretary of the Air Force directed AFOSI to open this investigation to fully document all issues in this matter. The investigation is pending.

B. 10th Security Forces Squadron

In the Air Force, the Security Force Squadron has both installation security and law enforcement responsibilities,⁹⁸⁶ but does not ordinarily investigate sexual assault cases because those investigations are performed by AFOSI.⁹⁸⁷ Nonetheless, Security Forces may be involved in the collection and maintenance of evidence obtained in sexual assault cases.⁹⁸⁸

1. Limited Involvement in Sexual Assault Cases.

We could not identify any instances in which a cadet alleging sexual assault has initially come forward to the 10th Security Forces Squadron. The Academy has its own instruction directing that 10th Security Forces Squadron investigators or AFOSI will be contacted to secure evidence in sexual assault cases.⁹⁸⁹ Security Forces investigators have the authority to maintain this evidence without a requirement to disclose the identity of the victim to other investigative agencies until such time as the victim consents or the Superintendent directs an investigation.⁹⁹⁰ Security Forces will secure any recent potential crime scene, including sexual assault crime scenes.⁹⁹¹ However, the 10th

⁹⁸⁶ Air Force Instruction 31-201, ¶ 2.2. Security Forces members investigate all crimes, offenses or incidents falling within their investigative jurisdiction as set forth in Air Force Instruction 31-206, Attachment 2 and Air Force Instruction 71-101, Volume 1, Attachment 2. Air Force Instruction 31-206, ¶ 2.1. Among the crimes falling within their investigative jurisdiction are: simple assaults, child physical abuse or neglect not involving serious bodily harm and not involving sexual abuse, computer crimes such as misdemeanor offenses, adult pornography or unauthorized personal use. They also investigate all on-base vehicular deaths (with the exception of hit and runs), drug abuse involving use or possession, larceny of government and personal property in lesser amounts, and sex offenses such as indecent exposure, sexual misconduct and voyeurism. Air Force Instruction 31-206, Attachment 2 and Air Force Instruction 71-101, Volume 1, Attachment 2. When authorized, Security Forces provide investigative assistance to AFOSI. The AFOSI detachment commander or special agent in charge and CSF (Chief of Security Forces) jointly make determinations of need. Air Force Instruction 31-206, ¶ 2.1.1. The AFOSI Detachment 8 Commander and the 10th Security Forces Squadron Commander stated that AFOSI investigates cases of serious sex offenses such as sexual assaults and indecent assaults. *See* Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander and 10th Security Forces Squadron Commander, Exhibit 238.

⁹⁸⁷ Air Force Policy Directive 31-2, Law Enforcement (May 6, 1994) is the Air Force Directive governing Security Forces personnel. Air Force Instruction Air Force 31-206, Security Forces Investigations Program (August 1, 2001) implements Air Force Policy Directive 31-2 and establishes responsibilities and guidance on Security Forces investigation of criminal matters. Air Force Instruction 31-206, Attachment 2, Rule 28, delineates responsibilities for investigating sex offenses. AFOSI is given responsibility to investigate rape, sodomy, cases involving serious bodily harm, carnal knowledge and sexual misconduct by authority figures. The Security Forces are to investigate sex crimes involving indecent exposure, sexual misconduct and voyeurism. However, sexual misconduct for purposes of Air Force Instruction 31-206 are those sexual acts in violation of Chapter 7 of Title 10, U.S.C., occurring between consenting adults, in private, whether on or off a military installation. Air Force Instruction 31-206, Attachment 1. These types of offenses are only investigated at the request of the subject's commander. However, the 10th Security Forces Squadron is currently investigating an alleged sexual assault in which the cadet victim was grabbed on the buttocks through her clothing. AFOSI and the 10th Air Base Wing Legal Office are aware that the 10th Security Forces Squadron is investigating this case. Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 5; Memorandum for Record, Follow-up Interview with AFOSI Detachment Commander, Exhibit 239.

⁹⁸⁸ For a discussion of Security Forces involvement in cadet security, *see* this Report, Section IV.E., Dormitory Environment.

⁹⁸⁹ USAFA Instruction 51-201, Exhibit 55, at Attachment 5, ¶ A5.5.

⁹⁹⁰ *Id.* at ¶ 2.3.1.1.

⁹⁹¹ *Id.* at ¶ 2.8.1.1.

Security Forces Squadron has not provided initial response to a sexual assault crime scene during the tenure of its current commander from June 2002 to the present.⁹⁹² While the 10th Security Forces Squadron is not involved in the investigation of such cases, these as well as other cases of cadet misconduct may be brought to their attention and discussed at the Commandant's "Cops and Robbers" meeting held every other week.⁹⁹³

2. Collection and Maintenance of Rape Protocols and Evidence.

Security Forces is involved in the collection and maintenance of evidence obtained in some sexual assault cases. If a cadet victim reports a sexual assault to CASIE or the Cadet Counseling Center, the victim is encouraged to complete a rape protocol kit for use in a criminal investigation, regardless of whether she wants to initiate a criminal investigation at that time.⁹⁹⁴ In accordance with a Memorandum of Agreement between the Academy and Memorial Hospital⁹⁹⁵ in Colorado Springs, Colorado, Memorial Hospital performs rape protocols for cadet victims.⁹⁹⁶ However, Memorial Hospital requires authorization by a law enforcement officer before conducting the examination.⁹⁹⁷ The 10th Security Forces Squadron is typically contacted by CASIE or a victim advocate and notified to go to Memorial Hospital to request a rape protocol kit. The 10th Security Forces Squadron investigator shows his or her law enforcement credentials to the Sexual Assault Nurse Examiner (SANE) prior to initiation of an examination of a cadet victim.⁹⁹⁸ When the examination is complete, the 10th Security Forces Squadron investigators receive the rape protocol kit from the SANE nurse⁹⁹⁹ and provide security for the evidence.¹⁰⁰⁰

According to the AFOSI Chief Forensic Consultant, storing biological evidence (whether it is blood, urine, or vaginal lavages) at the 10th Security Forces Squadron until such time as a victim decides to report an alleged sexual assault to AFOSI raises concerns. Biological evidence degrades over time. If alcohol or "date rape" drugs are a factor in the sexual assault, the timely collection of a blood sample and its submission for laboratory analysis is critical.¹⁰⁰¹

Performing a physical examination is merely one step in a sexual assault investigation. Other types of physical evidence are also material and can and should be gathered at the crime scene. Examination of clothing and the accurate photographic documentation of a victim's injuries may be part of the particular rape protocol. Also, in contrast to the victim advocate's service, which

⁹⁹² See statement of 10th Security Forces Squadron Commander, Exhibit 178, at 1.

⁹⁹³ See Statement of 10th Security Forces Squadron Commander, Exhibit 178, at 2; Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 2; Statement of Academy Legal Office Chief of Military Justice, Exhibit 91, at 3; Statement of 10th Air Base Wing Legal Office former Chief of Justice, Exhibit 156, at 1; and Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1.

⁹⁹⁴ See Statement of Victim Advocate Coordinator, Exhibit 50, at 23-24; Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246. See also Statement of CASIE Program Manager, Exhibit 99. She stated that the rape kit is explained to the victim and the individual is told how to get one done without a formal investigation. The victim is also told there is a seventy-two hour limit on recovering evidence. *Id.* at 3.

⁹⁹⁵ Memorandum of Agreement Between the United States Air Force Academy and Memorial Hospital, Exhibit 404.

⁹⁹⁶ See Statement of Permanent Professor and Head, Department of Behavioral Sciences and Leadership, Exhibit 84, at 4; see also Statement of Victim Advocate Coordinator, Exhibit 50, at 4, 40 and 78.

⁹⁹⁷ See Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 1.

⁹⁹⁸ See *id.* and Statement of 10th Security Forces Squadron Commander, Exhibit 178, at 1.

⁹⁹⁹ See Statement of 10th Security Forces Squadron Commander, Exhibit 178, at 1; Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 1.

¹⁰⁰⁰ See Statement of 10th Security Forces Squadron Commander, Exhibit 178, at 1; See Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 2.

¹⁰⁰¹ Working Group member (AFOSI) comment.

focuses only on the collection of evidence from the victim, there may be the need for timely collection of evidence from the alleged perpetrator and others.¹⁰⁰²

There may be an adverse effect from the lack of interaction between the SANE nurse and a law enforcement investigator. Information disclosed by the victim to the nurse during the course of the medical examination, which could provide investigators local investigative leads or corroborate the victim's allegation, may not be shared with law enforcement in all cases.¹⁰⁰³

If the cadet victim requests a criminal investigation, the rape kit is released to AFOSI for safeguarding in their evidence room.¹⁰⁰⁴ If the victim does not want to initiate an official investigation at that time, 10th Security Forces Squadron investigators log in and maintain the rape kit in an evidence room.¹⁰⁰⁵ Security Forces maintain rape kits until authorized to dispose of them by 10th Air Base Wing Legal Office.¹⁰⁰⁶

3. Allegations of Lost or Destroyed Rape Kits.

The Working Group identified two victims who alleged mishandling of a rape kit by AFOSI: one victim who claimed that her rape kit was lost and another victim who alleged that her rape kit was destroyed. In the first situation, the victim alleged that she was assaulted in 2002. She traveled to Memorial Hospital and obtained a rape kit. AFOSI maintained control of the rape kit because it was involved in the criminal investigation. The victim claims she contacted AFOSI for her rape kit; but, the kit was not available because it had been sent to a lab for analysis.¹⁰⁰⁷ The rape kit is currently in the custody of the AFOSI and is stored in their evidence room while the investigation continues.¹⁰⁰⁸

In the second situation, the victim alleged that she was assaulted in 2001. AFOSI had custody of the rape kit because the case was under criminal investigation. In approximately mid-September to October 2002, the victim sent an e-mail message to an Air Force attorney who was involved in her case and requested a copy of the records relating to the results of her rape kit.¹⁰⁰⁹ The attorney said she had directed the rape kit be destroyed in accordance with usual procedures because the case was not going to court-martial and to protect her privacy. The attorney told the cadet she could get a copy of the records from Memorial Hospital and offered to assist her. The

¹⁰⁰² *Id.*

¹⁰⁰³ *Id.*

¹⁰⁰⁴ See Statement of 10th Security Forces Squadron Commander, Exhibit 178, at 2; Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 2; See Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246.

¹⁰⁰⁵ See Statement of 10th Security Forces Squadron Commander, Exhibit 178, at 1; Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246 at 2.

¹⁰⁰⁶ Air Force Instruction 31-206, ¶ 2.6.1.9. (obtain written approval from the Staff Judge Advocate before disposing of the evidence).

¹⁰⁰⁷ See Memo for SAF/IGX, AFOSI Detachment 808 Evidence Inspection Results, Exhibit 247; Statement of AFOSI Detachment Commander, Exhibit 177 at 4; Statement of Academy Legal Office, Chief of Justice, Exhibit 91 at 5.

¹⁰⁰⁸ See Memorandum, Re: Evidence Inspection Results, Exhibit 247; Statement of AFOSI Detachment Commander, Exhibit 177, at 4.

¹⁰⁰⁹ See Memo for Academy Legal Office Staff Judge Advocate, February 14, 2003, Exhibit 248. The attorney remembers the cadet asked for the rape kit "approximately 1 to 2 months before I PCS'd [Permanent Change of Station] from Schriever, on 17 November 02." In a later telephone interview, the assistant trial counsel in the case, clarified that it was the assistant trial counsel's understanding that the victim was asking for a copy of the records completed by Memorial Hospital that related to the examination performed on the cadet after the alleged rape, not the actual items included in the kit itself. See Memorandum for Record, Telephonic Interview with Judge Advocate, Exhibit 249.

offer was declined.¹⁰¹⁰ The rape kit was destroyed on June 3, 2002, after authorization from the 10th Air Base Wing Legal Office in accordance with routine AFOSI procedures.¹⁰¹¹

The 10th Security Forces Squadron currently maintains two rape kits, one dated April 10, 2000, and the other dated May 24, 2002.¹⁰¹² In January 2001, the 10th Security Forces Squadron released a rape kit to AFOSI, the only rape kit annotated on the evidence log as being released.¹⁰¹³ There are no indications of rape kits having been lost or destroyed by the 10th Security Forces Squadron during the tenure of the evidence custodian, a period dating back to October 2000.¹⁰¹⁴

C. Legal Offices Advising Commanders¹⁰¹⁵

Academy leadership is advised by two legal offices, the 10th Air Base Wing Legal Office and the Academy Legal Office. These two offices advise on administrative and prosecutorial decisions pertaining to cadets, including decisions relating to sexual assault allegations. There is no formal delineation of responsibilities between the two legal offices¹⁰¹⁶ and both become involved in cadet discipline actions.

At the Training Wing level, Brig Gen Gilbert, the Commandant from 2001 to 2003, considered the 10th Air Base Wing Legal Office to be his legal advisor,¹⁰¹⁷ although Academy Legal Office lawyers also participated in his periodic meetings to discuss potential discipline cases.¹⁰¹⁸

¹⁰¹⁰ *Id.*

¹⁰¹¹ Air Force Office of Special Investigations Manual 71-118V4, ¶ 5.15; see Memorandum, Re: Evidence Inspection Results, Exhibit 247; AFOSI Form 158, Evidence Disposition, U.S. v. Rodriguez, Exhibit 250.

¹⁰¹² See Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 2; Statement of 10th Security Forces Squadron Commander, Exhibit 178, at 2. The 10th Air Base Wing Legal Office authorized destruction of the April 10, 2000, rape kit in a disposition letter dated August 20, 2002, as that kit was no longer required for evidentiary purposes. See Quarterly Evidence Disposition Letter, August 20, 2002, Exhibit 251. However, the rape kit will not be destroyed until investigations regarding sexual assaults at the Academy are finished. Memorandum for Record, Re: Evidence/Sexual Assault Kit, Exhibit 246, at 2.

¹⁰¹³ *Id.*

¹⁰¹⁴ *Id.*

¹⁰¹⁵ There is one General Court-Martial Convening Authority, the United States Air Force Academy Superintendent, as well as three Special Court-Martial Convening Authorities, the Dean of Faculty, the 34th Training Wing Commandant and the 10th Air Base Wing Commander at the Academy. Department of the Air Force, Special Order GA-001, Court Martial Convening Authorities, Exhibit 8. There are two separate legal offices, the Academy Legal Office and the 10th Air Base Wing Legal Office, at the Academy aside from the Department of Law, which falls under the Dean of Faculty and does not act as a legal advisor for commanders. See Statement of Brig Gen Wagie, Exhibit 198, at 31-32. The Academy exercises concurrent jurisdiction with the State of Colorado over the grounds of the Academy. In May 1995, the Colorado legislature passed a bill, which was signed into law by the governor, which offered concurrent jurisdiction of the lands dedicated to the Academy. Staff Summary Sheet, Re: Academy Legislative Jurisdiction, Exhibit 252. This matter was presented to the Secretary of the Air Force with the recommendation that she accept concurrent legislative jurisdiction over the Academy. The Staff Summary Sheet indicates the Secretary of the Air Force signed the recommendation accepting concurrent jurisdiction. *Id.*

¹⁰¹⁶ See Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1, 3; Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 8.

¹⁰¹⁷ See Statement of Brig Gen Gilbert, Exhibit 10, at 61-62; Statement of Brig Gen Welsh, Exhibit 64, at 43. However, Brig Gen Welsh stated he also used the Academy Legal Office for obtaining second opinions. *Id.* at 68. But see Statement of Maj Gen Lorenz who indicated he considered the Academy Legal Office to be his legal advisor rather than the 10th Air Base Wing Legal Office. *Id.* at 59. However, he would also receive advice from the 10th Air Base Wing Legal Office. *Id.*

¹⁰¹⁸ Statement of Brig Gen Gilbert, Exhibit 10, at 61-63. See statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 5; Statement of Academy Legal Office Chief of Military Justice, Exhibit 91, at 1; Statement of Academy

Brigadier General Gilbert did not request the Academy Legal Office to attend his meetings.¹⁰¹⁹ While the 10th Air Base Wing Legal Office is responsible for nonjudicial punishment and court-martial actions, Academy Legal Office representatives frequently advise the Training Group on whether cadet discipline cases warrant consideration of nonjudicial punishment, court-martial, disenrollment or other significant action.¹⁰²⁰ However, Academy Legal Office lawyers may not know of the case until a disenrollment action is initiated.¹⁰²¹ Neither legal office is involved in amnesty decisions,¹⁰²² although Col Eskridge, the Vice Commandant from December 2002 to March 2003, said he would call Academy Legal Office lawyers for advice.¹⁰²³

There is interaction between the Academy Legal Office and 10th Air Base Wing Legal Office. The 10th Air Base Wing Staff Judge Advocate views the Academy Legal Office as a MAJCOM (superior command legal office) and keeps them apprised of significant actions involving the 10th Air Base Wing Legal Office.¹⁰²⁴ However, when it comes to cadet disciplinary matters, neither office is necessarily involved in the day-to-day cadet disciplinary system.¹⁰²⁵ The 10th Air Base Wing Legal Office handles all courts-martial and Article 15 actions for cadets and other Air Force personnel at the Academy, while the Academy Legal Office handles cadet discipline and disenrollment actions. The 10th Air Base Wing Legal Office generally is unaware of cases being handled in the cadet disciplinary system because their responsibilities begin when a decision is made that a cadet will face UCMJ action.¹⁰²⁶ The 10th Air Base Wing Legal Office was not aware of information on many of the cadet discipline cases, as opposed to UCMJ cases, discussed by the Academy Legal Office representative at the Commandant's "Cops and Robbers" meeting because they were handled within the cadet disciplinary system.¹⁰²⁷

While the Academy Legal Office works the cadet disenrollment cases and has a legal advisor on the Military Review Committee who considers cadet misconduct cases, they are not necessarily involved in day-to-day cadet discipline decisions. Cases that are not perceived as sufficiently serious to warrant consideration of disenrollment do not rise to the Academy Legal Office level.¹⁰²⁸ The first time the Academy Legal Office may learn of cadet misconduct is often

Legal Office Staff Judge Advocate, Exhibit 162, at 1; Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 3.

¹⁰¹⁹ Statement of Brig Gen Gilbert, Exhibit 10, at 61. In discussing the fact that there are two legal offices at the Academy, Brig Gen Gilbert stated, "It would sure make life easier if there was one legal office on base." *Id.*

¹⁰²⁰ Statement of Col Slavec, Exhibit 23, at 119-123. *See* Statement of Academy Legal Office Chief of Military Justice, Exhibit 254, at 2, 8, 9.

¹⁰²¹ Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 3. *See* Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 3.

¹⁰²² Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 11.

¹⁰²³ Statement of Col Eskridge, Exhibit 124, at 39-40. Colonel Eskridge became the Vice Commandant on December 23, 2002. Amnesty, in this context, involves cadets receiving a promise that no discipline for cadet infractions will flow from self reports of sexual assault. For additional information, *see* this Report, Section III.E., Amnesty for Infractions.

¹⁰²⁴ Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 3. *See* Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 3.

¹⁰²⁵ *See* Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 1; Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1; Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 3.

¹⁰²⁶ *See* Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 1, 6; Statement of Former 10th Air Base Wing Staff Judge Advocate, Exhibit 168, at 2.

¹⁰²⁷ *See* Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 2.

¹⁰²⁸ *See* Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 2-4; Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1, 3.

when a cadet is recommended for disenrollment.¹⁰²⁹ Whether either or both legal offices are involved depends mainly upon personnel within the Training Group recognizing that the more serious forms of discipline may be appropriate. This recognition may be affected by differing views among leadership about the appropriate use of cadet discipline for actions that could also be considered crimes. (Over time, cadet discipline has been used for a variety of actions which, if proven, could qualify as UCMJ violations.)¹⁰³⁰

As of February 2003, the 10th Air Base Wing Staff Judge Advocate and the Academy Legal Office Chief of Justice now meet prior to the Commandant's "Cops and Robbers" meeting to discuss the cases that will be briefed to avoid confusion or conflict, and to ensure that cadet misconduct cases are handled appropriately.¹⁰³¹

In making disciplinary decisions, Academy leadership has not consistently used nonjudicial punishment under Article 15 of the UCMJ.¹⁰³² In recent years, there has been a misconception among Academy leadership, the 10th Air Base Wing Legal Office and the Academy Legal Office, that cadets should not be disciplined through the nonjudicial punishment process because a nonjudicial punishment action did not follow the cadet on to active duty and because there was little "punishment" that could be imposed on a cadet.¹⁰³³ Because the command considered nonjudicial punishment not to be a viable alternative for cadet misconduct, the balancing test became whether the case warranted action in the cadet disciplinary system versus a court-martial,¹⁰³⁴ without consideration for use of nonjudicial punishment. (Some leaders observed that, in their views, imposition of cadet discipline may have a more immediate and effective impact in cases than the use of nonjudicial punishment).¹⁰³⁵

¹⁰²⁹ See Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 4; Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 3.

¹⁰³⁰ See Memorandum for Record, Trend Analysis of Discipline Data, Exhibit 147; Talking Paper, Area Defense Counsel Involvement in Disciplinary System, Exhibit 255.

¹⁰³¹ See Memorandum for Record, 10th Air Base Wing Staff Judge Advocate, Exhibit 256, at 1; Statement of Academy Legal Office Chief of Military Justice, Exhibit 254, at 9.

¹⁰³² Article 15, UCMJ, authorizes commanders to impose nonjudicial punishment for violations of the UCMJ. The amount of punishment that can be imposed is significantly less than could be imposed by a court-martial. The member can decline nonjudicial punishment and demand a court-martial. MCM, Part V. See Statement of Academy Legal Office Chief of Justice, Exhibit 254, at 7; Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 4; Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 1-2; Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 1; Statement of Brig Gen Gilbert, Exhibit 10, at 56-63; Statement of Col Slavec, Exhibit 23, at 117; Statement of 10th Air Base Wing Commander, Exhibit 257, at 2.

¹⁰³³ See Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 2; Statement of Brig Gen Gilbert, Exhibit 10, at 60-61; Statement of Col Slavec, Exhibit 23, at 48; Statement of Academy Legal Office Chief of Justice, Exhibit 254, at 7; Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 1; Statement of 10th Air Base Wing Commander, Exhibit 257, at 2. However, while no cadet received nonjudicial punishment during calendar year 2002, as recently as 2001 and 2000, cadets did receive nonjudicial punishment. Memorandum for Record, Interview with Chief, AMJAMS and Special Projects, Re: Cadet Disciplinary Statistics, March 20, 2003, Exhibit 413.

Automated Military Justice Analysis and Management System (AMJAMS) indicates the following numbers of nonjudicial punishment actions were offered to USAFA cadets from 1993 to 2002: 1993 – two; 1994 – eight; 1995 – eighteen; 1996 – eight; 1997 – zero; 1998 – zero; 1999 – zero; 2000 – three; 2001 – five; and 2002 – zero. No nonjudicial punishments were served on a cadet for any sexual misconduct offense from 1997 to 2002. AMJAMS Query, Article 15s for Sexual Misconduct, February 21, 2003, Exhibit 258. For an explanation of AMJAMS, see Memorandum for SAF/GCM, Analysis of USAFA Military Justice Data, Exhibit 259, at Attachment 3.

¹⁰³⁴ See Statement of Academy Legal Office Chief of Military Justice, Exhibit 254 at 9; Statement of Academy Legal Office Deputy Staff Judge Advocate, Exhibit 253, at 5; Statement of Brig Gen Gilbert, Exhibit 10, at 60-61; Statement of Col Slavec, Exhibit 23, at 118-119.

¹⁰³⁵ See Statement of Brig Gen Welsh, Exhibit 64, at 56-57; Statement of Brig Gen Gilbert, Exhibit 10, at 60-63. See also the statement of Maj Gen Lorenz who indicated cadet discipline was "harder" on a cadet than nonjudicial

Recently, the new 10th Air Base Wing Staff Judge Advocate discussed with Brig Gen Gilbert the appropriateness of using nonjudicial punishment for cadet misconduct. Academy leadership now considers nonjudicial punishment an option for cadet misconduct,¹⁰³⁶ and the Academy Legal Office concurs with this decision.¹⁰³⁷

D. Release of Information to Victims and Others

Some victims at the Academy have complained about an inability to obtain information related to their cases.¹⁰³⁸ Other cadets at the Academy have complained that they were unaware of sexual assaults occurring at the Academy and believe they should have been informed.¹⁰³⁹

Under the Air Force Instruction and Academy Instruction on victim and witness assistance, victims are entitled to certain information relating to the investigation of their allegations, the disposition of the case and the status of the accused.¹⁰⁴⁰ The instructions create no entitlements to others who are neither victims nor witnesses. However, as members of the general public, others may be able to obtain some information, as discussed below.

1. Release of Information to Victims While Case is Pending

While the case is still under investigation, Air Force Instruction 51-201 provides that victims may receive, upon request, information about: the status of the investigation to the extent that it will not interfere and is appropriate, the accused's pre-trial status and any subsequent changes in that

punishment. Statement of Maj Gen Lorenz, Exhibit 52, at 62-63. Major General Lorenz also questioned why the Academy would consider commissioning a cadet who received nonjudicial punishment. He recommended disenrollment of the cadet although he could not recall for certain whether the cadet also received nonjudicial punishment as well. *Id.* at 61.

¹⁰³⁶ See Statement of Brig Gen Gilbert, Exhibit 10, at 60-61; Statement of Col Slavec, Exhibit 23, at 117-120; Statement of Academy Legal Office Chief of Justice, Exhibit 254, at 7. According to the 10th Air Base Wing Staff Judge Advocate, when a cadet now receives nonjudicial punishment, that punishment can be placed in an Unfavorable Information File that may follow the cadet on to active duty. Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 2; Memorandum for Record, Interview with 10th Air Base Wing Staff Judge Advocate, Exhibit 256, at 1-2. An Unfavorable Information File contains derogatory data on an individual and may contain nonjudicial punishment for up to two years.

¹⁰³⁷ See Statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 2; Statement of Academy Legal Office Chief of Military Justice, Exhibit 254, at 7. Two cadets recently received nonjudicial punishment, but these were unrelated to any type of sexual assault. See Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 1-2; statement of Academy Legal Office Staff Judge Advocate, Exhibit 162, at 2. Cadet misconduct cases such as DUIs are now considered for nonjudicial punishment action as well as other disciplinary tools.

¹⁰³⁸ See Memorandum, Interview with Former Female Cadet Victim, Exhibit 260, at 5; and Statement of Two First-Class Female Cadets, Exhibit 136, at 3.

¹⁰³⁹ Statement of Male First-Class cadet, Exhibit 201 (cadets did not realize there was a problem until people started talking about it. The Academy administration does not keep cadets informed about what is happening at the Academy. Because information is not disseminated, speculation among cadets is rampant); Memorandum for Record, Group Interview with Female Cadets, Exhibit 218 (It takes a long time to resolve a case and leadership is silent about the cases); See Cadet Written Comments, Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 6, 9-10, 14, 20, 22 ("I NEVER heard any official message or word of what happened, or even if anything was being done." "I recently overheard how many cadets have been raped over the last four years. I really wish that they would make this information more available to cadets." "I think the Academy should be more upfront about sexual assault. If it happens, let us know"). See Memorandum for Record, Group Interview with CASIE Reps, Exhibit 152.

¹⁰⁴⁰ See generally Air Force Instruction 51-201, Chapter 7 and USAFA Instruction 51-201. Disclosure of information must be in accordance with the Privacy Act and Freedom of Information.

status.¹⁰⁴¹ Victims are also entitled to be consulted so their views may be obtained regarding: the decision not to prefer court-martial charges, the dismissal of charges, pretrial confinement, pretrial agreement negotiations, and discharge in lieu of trial by court-martial.¹⁰⁴² There is some evidence to suggest that victims at the Academy were not routinely consulted nor their views obtained regarding the decision not to prefer charges.¹⁰⁴³

2. Release of Information to Victims Upon Disposition of Case

Once a case is completed, a victim may request documents, such as law enforcement investigative reports, the Article 32 report,¹⁰⁴⁴ or the transcript of the trial or information about the disposition of the case. Air Force Instruction 51-201 addresses documents and agency records created during the course of the military justice process and any document or record incorporated into a military justice document or record. The instruction states that such documents may be released to victims or others, if appropriate, pursuant to a Freedom of Information Act (FOIA) request.¹⁰⁴⁵

FOIA is a federal law that facilitates public access to information held by the federal government. FOIA favors release unless information falls within one of nine exemptions which provide a basis for withholding information.¹⁰⁴⁶ Three of these exemptions found at 5 U.S.C. 552(b) are relevant to requests most likely to be made by sexual assault victims or others.¹⁰⁴⁷ For example, if a victim requests a copy of the Article 32 report, the requestor may appropriately be denied portions of the report under Exemption 5 of FOIA which allows withholding of documents generated within a federal agency like the Air Force or between federal agencies which would normally be privileged in civil court litigation.¹⁰⁴⁸ Documents that fall into this category would include attorney work product and pre-decisional documents. Portions of the Article 32 report may be considered pre-decisional because it provides an analysis of evidence related to the case as well as a recommendation about whether trial is appropriate; this information is provided to a convening authority who determines whether to send a case to trial.

Victims or others may also request copies of investigative reports or other information generated by AFOSI.¹⁰⁴⁹ These may be properly withheld under Exemption 7. This exemption

¹⁰⁴¹ Air Force Instruction 51-201, ¶ 7.10.6.1 through 7.10.6.5.

¹⁰⁴² *Id.* at ¶ 7.10.10.

¹⁰⁴³ Statement of Vice Commandant, (July 1998 to 1999), Exhibit 51 at 19; Statement of Vice Commandant, (Sept. 2000 to January 2001), Exhibit 261, at 24; *but see* Memorandum for Record, Telephonic Interview with Former Chief of Military Justice, 10th Air Base Wing, Exhibit 169, at 2.

¹⁰⁴⁴ An Article 32 is a pre-trial investigation conducted by an impartial investigating officer to consider charges that have been preferred [formal accusations] and to make a recommendation as to the appropriate disposition of the case. The investigating officer generates a report that summarizes the evidence received in the investigation and provides a recommendation, similar to a grand jury, as to whether a case should go to trial. The recommendation is forwarded to the convening authority who has the authority to refer a case for trial by court-martial. *See generally* UCMJ art. 32.

¹⁰⁴⁵ *See* Air Force Instruction 51-201, ¶ 12.7.

¹⁰⁴⁶ *See generally* 5 U.S.C. § 552.

¹⁰⁴⁷ *See* 5 U.S.C. § 552(b)(5), (6) and (7).

¹⁰⁴⁸ 5 U.S.C. § 552(b)(5). Ordinarily, the factual portions of the report must be released pursuant to FOIA, but the deliberative portions (the Investigating Officer's analysis and conclusions) would be protected from release by Exemption 5.

¹⁰⁴⁹ Statement of Brig Gen Welsh, Exhibit 64 at 70-71 (parents of a female cadet sexual assault victim called the Commandant and AFOSI frequently to ask what was going on in the investigation Statement of Two First-Class Female Cadets, Exhibit 136, at 3 (victim requested AFOSI report and did not receive it, stating she was advised by

allows the withholding of law enforcement information if, among other reasons, the release could reasonably be expected to interfere with enforcement, if the release could deprive an accused of a fair trial, or if it could reasonably be expected to constitute an unwarranted invasion of personal privacy.¹⁰⁵⁰

Victims may be interested in knowing what punishment, if any, the accused received.¹⁰⁵¹ The release of this type of information generally is problematic in that the Privacy Act restricts the release of information to third parties. The general rule under the Privacy Act is that personal information contained in an Air Force record may not be disclosed to anyone without the consent of the individual to whom the record pertains.¹⁰⁵² This provision contains general exceptions which on first look appear to provide avenues for release of information.¹⁰⁵³ However, as discussed below, the current application of these exceptions do not allow much latitude in the release of information from personnel files to victims.

An exception, under the Privacy Act, allows release without the consent of the individual who is the subject of the record for a published “routine use.”¹⁰⁵⁴ There is currently no published “routine use” in the Air Force authorizing disclosure of otherwise protected information to victims.¹⁰⁵⁵

Another exception under the Privacy Act allows release if disclosure is required under the FOIA.¹⁰⁵⁶ FOIA requires an agency to release personal information when the public interest in disclosure outweighs the privacy interests involved. However, under Exemption 6 of FOIA, personal information may be withheld where disclosure would constitute a “clearly unwarranted invasion of personal privacy.”¹⁰⁵⁷ DoD’s FOIA guidance regarding protection of information that qualifies for Exemption 6 under FOIA specifies that there is “no discretion” to release this information.¹⁰⁵⁸

A 1991 Opinion of The Judge Advocate General (TJAG) of the Air Force (the guidance available to the field) specifically addressed the issue of disclosure of information to victims about adverse administrative actions.¹⁰⁵⁹ It stated that “the privacy interests generally recognized in protecting information about adverse administration actions outweigh any public interest in disclosure.”¹⁰⁶⁰ The TJAG Opinion relied on the Supreme Court decision in *DOJ v. Reporters Committee for Freedom of the Press*¹⁰⁶¹ which held that the public interest contemplated by FOIA is limited to the core purpose for which Congress enacted the FOIA – shedding light on the operations

AFOSI that it was lost). Note that the staff team located the report and has coordinated with AFOSI to have the document reviewed to determine releaseability to the victim.

¹⁰⁵⁰ 5 U.S.C. § 552(b)7.

¹⁰⁵¹ Memorandum, Interview with Female Former Cadet, Exhibit 260, at 5 (victim, now a graduate of the Academy, seeking information about the disciplinary action and nature of discharge of the individual who took advantage of her sexually when she was a cadet.)

¹⁰⁵² See generally 5 U.S.C. § 552a.

¹⁰⁵³ 5 U.S.C. § 552a(b).

¹⁰⁵⁴ 5 U.S.C. § 552a(b)(3).

¹⁰⁵⁵ Opinion of the Judge Advocate General of the Air Force 1991/83, [hereinafter OpJAGAF] Exhibit 263.

¹⁰⁵⁶ 5 U.S.C. § 552a(b)(2).

¹⁰⁵⁷ 5 U.S.C. § 552(b)(6).

¹⁰⁵⁸ DoD Publication 5400.7-R, ¶ C3.2.1.6., available at <http://www.dtic.mil/whs/directives/corres/pub1.html>.

¹⁰⁵⁹ OpJAGAF 1991/83, Exhibit 263.

¹⁰⁶⁰ *Id.*

¹⁰⁶¹ United States Dep’t of Justice v. Reporters Committee for Freedom of Press, 489 U.S. 749, 771-775 (1989).

and activities of the government. The TJAG Opinion further stated, that a personal ‘need to know’ generally does not qualify as a “public interest” for the purposes of FOIA. The TJAG Opinion added that this conclusion that the “balancing” of public interest and privacy concerns must favor the offender is supported by the absence of mandatory disclosure provisions in the federal *Victim and Witness Assistance Act*.¹⁰⁶²

Thus, neither of these exceptions, as written and interpreted, is helpful for victims to obtain information on disposition when the matter is handled administratively rather than through a court-martial.

Air Force Instruction 51-201 provides some guidance on what information on disposition may be passed to victims when the charges against an accused are disposed of by an action other than court-martial. This guidance essentially restates the balancing test required in FOIA under Exemption 6.¹⁰⁶³ It confirms that information regarding the actual administrative disposition is unlikely to be provided to victims based on an Air Force determination that “less serious misconduct, which is handled administratively rather than judicially generally is not considered of sufficient public interest to outweigh the privacy interest of the individual.”¹⁰⁶⁴

However, the Air Force Instruction does provide that victims may be given some information when cases are handled administratively. It states the victim should be informed of the “general options” available to the offender’s commander and the reasons why a commander cannot go further in revealing actions taken. The Air Force Instruction also suggests that the victim may be told that, “the suspect’s commander took appropriate administrative action,” or that “the suspect’s commander took no adverse administrative action.”¹⁰⁶⁵ At the Academy and under the Air Force Instruction, the responsibility to ensure that victims were so advised would have fallen to the 10th Air Base Wing Staff Judge Advocate, or a designee, such as a victim liaison officer.¹⁰⁶⁶ Given that the 10th Air Base Wing Legal Office was usually not aware of cases unless the AFOSI was informed and investigated, the Staff Judge Advocate was not in a position to advise victims whose cases were handled administratively,¹⁰⁶⁷ which is how many of the sexual assault cases at the Academy were handled.¹⁰⁶⁸

Victim advocates at the Academy were in a better position to know about sexual assault cases that were handled administratively.¹⁰⁶⁹ However, the victim advocates followed the Academy Instruction¹⁰⁷⁰ which appears more restrictive than the Air Force Instruction. The Academy

¹⁰⁶² OpJAGAF 1991/83, Exhibit 263.

¹⁰⁶³ Air Force Instruction 51-201, ¶ 7.15 In situations where the case is resolved administratively, the legitimate interests of the victim are balanced with the privacy rights of the suspect. It states that “as a general rule, a victim may not be told an individual received punishment under Article 15, UCMJ, [nonjudicial punishment], or the individual received some form of adverse administrative action (e.g., reprimand).”

¹⁰⁶⁴ Air Force Instruction 51-201, ¶ 12.7.3.

¹⁰⁶⁵ Air Force Instruction 51-201, ¶ 7.15.

¹⁰⁶⁶ Air Force Instruction 51-201, ¶¶ 7.7, 7.8; Memorandum, Delegation of VWAP Responsibilities, Exhibit 166. There is no information regarding whether any delegation existed prior to this date.

¹⁰⁶⁷ Statement of 10th Air Base Wing Staff Judge Advocate, Exhibit 403, at 2-5; Statement of Academy Staff Judge Advocate, Exhibit 162, at 12-13.

¹⁰⁶⁸ Data of Investigated Allegations (Additional Breakdown), Exhibit 383.

¹⁰⁶⁹ In fact, victim advocates were often unaware of the disposition of cases themselves. Statement of Victim Advocate Coordinator, Exhibit 182, at 4.

¹⁰⁷⁰ Statement of Victim Advocate Coordinator, Exhibit 50 at 109.

Instruction specifically provides that when cases are handled through the cadet disciplinary system, the information is private and can only be released to the victim with the accused's consent.¹⁰⁷¹

As a practical result, the victim would not likely be advised of the actual administrative disposition under either the Air Force or the Academy Instruction. However, under the Air Force Instruction, the victim would receive some limited information regarding the commander's options and whether the commander took any action.

3. Release of Information to Others Regarding Disposition

The same rules that apply to the release of documents and disposition information to victims, also apply to others, including members of the Cadet Wing. Thus, based on the analysis given above, cadets could not be informed of a specific outcome in a particular case.

Some cadets have suggested the use of "Cadet X" letters to inform and educate the Cadet Wing.¹⁰⁷² A "Cadet X" letter is a document transmitted to all cadets which describes a scenario involving an unnamed cadet known as "Cadet X." The scenario is usually based on a factual incident and is usually designed to allow other cadets to learn from the mistakes of others without embarrassing the unnamed cadet(s).¹⁰⁷³ The Superintendent, Vice Commandant, Deputy Group Training Commander and Victim Advocate Coordinator indicated they had expressed an interest in using "Cadet X" letters to communicate with the Cadet Wing on sexual assault issues, but it never occurred, due to legal, privacy and practical concerns.¹⁰⁷⁴

Neither the Privacy Act nor FOIA specifically precludes the use of "Cadet X" letters so long as the letters do not contain prohibited information such as the name of the victim or alleged perpetrator or specific details which would point to the identity of the parties involved.¹⁰⁷⁵ Of note, there is evidence that the Air Base Wing newspaper has published information regarding nonjudicial punishment given to members, identifying only the rank, squadron, conduct, and punishment imposed.¹⁰⁷⁶

To address these issues, the Air Force General Counsel has reviewed the law and options with a view toward providing victims the maximum information possible under the law on the

¹⁰⁷¹ USAFA Instruction 51-201, ¶ 1.3.7. Exhibit 55.

¹⁰⁷² Statement of Female Fourth-Class cadet, Exhibit 200 at 1 (though Cadet "X" letters would be a good idea because the majority of cadets didn't have any idea sexual assaults were occurring at the Academy until the information came out in the media); Cadet Written Comments to Sexual Assault Reporting and Treatment Program Survey, January 2003, Exhibit 143, at 9-10 (if the leadership were to use "Cadet X" information to brief and advise of precautionary measures taken by leadership, cadet would feel "taken care of, watched over, cared about and not shady like [the cadets who talk about sexual assault at the Academy are] some girl-pride club that has to operate outside of the uniform").

¹⁰⁷³ See Statement of Col Eskridge, Exhibit 124, at 17 (explaining "Cadet X" letters).

¹⁰⁷⁴ Statement of Lt Gen Dallager, Exhibit 71, at 184-185, and 194 (believed a method of providing feedback on a regular routine basis without compromising confidentiality was "absolutely essential," but suspects "Cadet X" letters were not used because many people believed the system was working well); Statement of Col Eskridge, Exhibit 124, at 17 (pushed the use of "Cadet X" letters, but met resistance from Legal); Statement of Deputy Training Group Commander, Exhibit 264, at 38-39 (met unspecified resistance for three years to use "Cadet X" letters and noted that the base newspaper publishes nonjudicial punishments by identifying only the individual's squadron, rank, conduct, and punishment); Statement of Victim Advocate Coordinator, Exhibit 50, at 109-110 (legal told her use of "Cadet X" letters for sexual assault cases was not permissible.); *but see* Statement of Vice Commandant, July 1998 to April 1999, Exhibit 51, at 20 (indicating Cadet X letters were used).

¹⁰⁷⁵ See generally, 5 U.S.C. § 552 and 5 U.S.C. § 552a.

¹⁰⁷⁶ Statement of Deputy Group Commander, Exhibit 264, at 38-39.

status of their cases. Based on that review, the Secretary of the Air Force has authorized implementation of measures that will provide for expanded discretion to provide information to victims and requested the General Counsel to revise both the Air Force and Academy Instructions accordingly.

E. Victim Infractions Associated with Sexual Assault

Cadets who want to report an offense, including sexual assault, can face a dilemma, if doing so will reveal their own and others' misconduct. Indeed, some cadets expressed concern they would be punished for cadet infractions they have committed that could be revealed during the reporting of the assault.¹⁰⁷⁷ There has also been a complaint of punishment of a victim for cadet infractions after reporting an assault (while the case was still pending).¹⁰⁷⁸ The Form 10 process is technically an adjudicatory process, but initiation of that process can have adverse effects on a cadet and can be perceived by them as punishment.

1. Cadet Misconduct and the Form 10 Process.

All Academy personnel have a responsibility to report known suspected violations of established standards to the cadet's chain of command. A cadet also has the responsibility to report his/her own violations of established standards of conduct. This includes a duty to report any violation of the law to civilian or military law enforcement authorities.¹⁰⁷⁹

Anyone who reports cadet misconduct uses the Air Force Cadet Wing Form 10, *Report of Conduct*.¹⁰⁸⁰ An initial review for all offenses is conducted by the AOC/MTL, Operations NCO and the cadet's chain of command in that sequence. The cadet must respond and deliver the Air Force Cadet Wing Form 10 to the element leader, noting on the form whether he or she wishes to contest the action and providing information he or she would like the chain of command to consider.

The Air Force Cadet Wing Form 10 must reach the highest level of authority (Class A, B, C or D) as indicated by the conduct violation(s) alleged by the individual issuing the Form 10.¹⁰⁸¹ "The recommended demerits are then awarded for each committed conduct violation. This standardization throughout the Cadet Wing is necessary since demerits are a "measure of conduct" for probation or disenrollment requirements. Since mitigating, extenuating or aggravating circumstances differ, the chain of command may elevate/lower any sanction to the next higher/lower class if appropriate. The cadet squadron commander will seek the awarding official's concurrence for slight deviations and AOC/MTL coordination for significant deviations."¹⁰⁸²

¹⁰⁷⁷ Memorandum for Record, Interview with AOC, Exhibit 159; Statement of Victim Advocate Coordinator, Exhibit 50, at 132. *See also* Statement of Male First-Class cadet, Exhibit 135; Statement of Col Eskridge, Exhibit 124, at 66-67; Memorandum for Record, Group Interview with CASIE Representatives, February 25, 2003, Exhibit 152; Memorandum for Record, Group Interview with Male First, Second and Third-Class cadets, February 27, 2003, Exhibit 161; Memorandum for Record, Group Interview with AOCs, February 25, 2003, Exhibit 153.

¹⁰⁷⁸ Memorandum for Record, Explanation of Form(s) 10 Received, Exhibit 269, ¶ 5.

¹⁰⁷⁹ AF Cadet Wing Instruction 51-201, Discipline and Probation System, ¶ 3.1 (Sept. 26, 2001), Exhibit 265.

¹⁰⁸⁰ AF Cadet Wing Form 10, Report of Conduct, Exhibit 266.

¹⁰⁸¹ AF Cadet Wing Instruction 51-201, ¶ 3.2.6., Exhibit 265.

¹⁰⁸² *Id.* at ¶ 3.2.6.1.

“The class of conduct violation determines the range of demerits and negative consequences according to the level of authority.”¹⁰⁸³ The case is forwarded through the immediate chain of command to the appropriate level of authority with recommendations concerning punishment.¹⁰⁸⁴ During this time, the cadet’s limits are the same as for a cadet with outstanding punishments as outlined in Air Force Cadet Wing Instruction 36-3001, *Limits, Liberties and Leave*. Additionally, cadets pending Class D violations are restricted to the squadron duty area, pending final resolution of the Air Force Cadet Wing Form 10.¹⁰⁸⁵

When an officer or cadet in the chain of command requests, the cadet is required to provide a statement revealing all information about the incident to include names of cadets or other persons involved, unless the conduct violation(s) is/are punishable under the UCMJ (as determined by a Judge Advocate). If the cadet declines to provide a statement, the case is forwarded for action (including potential disenrollment) based on the available facts.¹⁰⁸⁶

2. Cadet Perception of the Form 10 Process

Although the issuance of a Form 10 is technically the beginning of an adjudicative process, a cadet is still made aware of these Form 10s and may expect to be punished.¹⁰⁸⁷ Further, by virtue of a Form 10 being issued a cadet is placed on restriction until it is resolved.¹⁰⁸⁸ Though the cadet is able to receive passes upon request and approval, the cadet still may perceive this general restriction pending completion of the Form 10 as a form of punishment.¹⁰⁸⁹

In a recent case, a sexual assault victim asserted that after reporting the assault she received a Form 10 for fraternization, Class D hits for underage drinking, drinking in the dorms and a Form 10 for having sex in the dorms.¹⁰⁹⁰ The victim, and a friend of the victim, asserted they believed the punishment for the rule violations was extreme.¹⁰⁹¹ The Vice Commandant explained that “she

¹⁰⁸³ *Id.* at ¶ 3.2.6.2.

¹⁰⁸⁴ *Id.*

¹⁰⁸⁵ *Id.* at ¶ 3.2.5. *See also* ¶ 5.4 *Restrictions*. *See* Memorandum for Record, Interview with Academy Staff Members, Exhibit 267 (the cadet is put on restriction in order to keep track of the cadet until the issue is resolved).

¹⁰⁸⁶ AF Cadet Wing Instruction 51-201, ¶ 3.2.5, at Note 1, Exhibit 265.

¹⁰⁸⁷ Statement of Col Eskridge, Exhibit 124, at 45; Statement of Brig Gen Welsh, Exhibit 64, at 46.

¹⁰⁸⁸ AF Cadet Wing Instruction 51-201, ¶ 3.2.5., Exhibit 265. *See* Memorandum for Record, Interview with Academy Staff Members, Exhibit 267.

¹⁰⁸⁹ Memorandum for Record, Interview with Academy Staff Members, Exhibit 267 (aware of one case where a cadet was given a Form 10 and was restricted, for an infraction unrelated to the sexual assault and later rescinded due to the new policy).

¹⁰⁹⁰ *See* Memorandum for Record Re: Request to be Moved Back to Squadron 34, October 29, 2002, Exhibit 268; Memorandum for Record Re: Explanation of Form(s) 10 Received, November 19, 2002, Exhibit 269; Statement of First-Class cadet, Exhibit 135, at 1. *See also* Statement of Col Eskridge, Exhibit 124, at 44; and Statement of Col Slavec, Exhibit 23, at 161-164. AFCW Form 10, Report of Conduct, November 19, 2002, Exhibit 270 and AFCW Form 10, Report of Conduct, November 19, 2002, Exhibit 271.

¹⁰⁹¹ Memorandum for Record Re: Explanation of Form(s) 10 Received, November 19, 2002, Exhibit 269; Statement of First-Class cadet, Exhibit 135, at 1 (he felt the Class D hits she received for having sex, which resulted from the sexual assault incident in the dormitory, was the most severe punishment given to any cadet; he further thought because the victim was drinking the night of her assault and fraternized with upper classmates those could have been the reasons why she received such a severe punishment; he also thought the victim wanted to resign from the USAFA but he was under the impression the USAFA would not allow her to resign until she served her 260 hours of punishment).

in fact has never been punished” because the Form 10 process has been put on hold until the investigation is complete.¹⁰⁹²

Similarly, Col Slavec, the Training Group Commander, explained that the Form 10s were being issued at the same time as the assault was being investigated.¹⁰⁹³ She explained a Form 10 is purely administrative and it indicates that a cadet infraction is being investigated. The punishment is not handed out until the investigation is complete.¹⁰⁹⁴ She stated that she was just following the proper procedure. She stated, “So, insensitive or not, if you look at the black and white of the regulation, she was not granted amnesty, and it was grounds for us to do the job of cadet discipline system. Now, the fact she pursued assault, whether she got amnesty or not, came...after the Form 10 had been established...”¹⁰⁹⁵ However, Col Slavec knew of no time since she has been there that punishment for a victim has been imposed before the investigation is over.¹⁰⁹⁶

The Training Group Commander stated that the Form 10s are issued but she does not hand down the punishment until the investigation is over. She did not see a problem with this process. She stated, “The Form 10 [process] allows us to ensure the good order and discipline of the cadet discipline system is investigated. [Be]cause the cops and [AF]OSI don’t care about that.”¹⁰⁹⁷ She also stated that numerous Form 10s have been zeroed out. It is decided on a case-by-case basis.¹⁰⁹⁸

The Training Group Commander explained that there are instances, however, where Form 10s are processed against a victim for cadet infractions and the cadet is also requesting amnesty through CASIE. As the Vice Commandant is the only person given the information from CASIE, the Training Group Commander may not be aware that the person to whom she is issuing Form 10s is a victim of sexual assault requesting amnesty.¹⁰⁹⁹

The Commandant also stated he could see why initiation of Form 10s is problematic during a sexual assault case and initiated two Cadet Information Files that amended the amnesty policy.¹¹⁰⁰ The cadets have a reasonable basis to believe that, generally Form 10s initiated are Form 10s completed.¹¹⁰¹ The Superintendent opined that if a cadet receives a Form 10 his or her perception is going to be that punishment is imminent.¹¹⁰² The Vice Commandant explained that if a cadet receives a Form 10, the cadet thinks: “You’re going to be hung. I mean yeah, as a cadet that’s the

¹⁰⁹² Statement of Col Eskridge, Exhibit 124, at 44. Colonel Eskridge explained that the disciplinary process for related cadet infractions was initiated before Command was informed of the alleged sexual assault. *Id.* at 38. *See* Statement of Brig Gen Gilbert, Exhibit 10, at 78-80. *See also* Statement of Academy Chief of Military Justice, Exhibit 91, at 6.

¹⁰⁹³ Statement of Col Slavec, Exhibit 23, at 162; Memorandum for Record, Interview with Col Slavec, February 27, 2003, Exhibit 272.

¹⁰⁹⁴ Memorandum for Record, Interview with Col Slavec, Exhibit 272, at 2. *See also* Statement of Brig Gen Gilbert, Exhibit 10, at 79-81. *See also* Statement of Col Slavec, Exhibit 23, at 164.

¹⁰⁹⁵ Statement of Col Slavec, Exhibit 23, at 139.

¹⁰⁹⁶ *Id.* at 164. *See also* Memorandum for Record, Interview with Col Slavec, February 27, 2003, Exhibit 272.

¹⁰⁹⁷ Statement of Col Slavec, Exhibit 23, at 74.

¹⁰⁹⁸ *Id.* at 84-85.

¹⁰⁹⁹ *Id.* at 52-53. *See also* Statement of Brig Gen Gilbert, Exhibit 10, at 46-47, 50-51; Statement of Lt Gen Dallager, Exhibit 71, at 71-73.

¹¹⁰⁰ Statement of Brig Gen Gilbert Exhibit 10, at 80-81. *See* CIF 03-10 and 03-11, Exhibit 146. These Cadet Information Files state that no action will be taken under the cadet disciplinary system (i.e., Air Force Cadet Wing Form 10, Report of Conduct) upon cadets alleging they are victims of sexual assault until the allegations are thoroughly investigated by the appropriate agencies.

¹¹⁰¹ Statement of Col Eskridge, Exhibit 124, at 45. *See* Statement of Lt Gen Dallager, Exhibit 71, at 74; Statement of Brig Gen Welsh, Exhibit 64, at 46.

¹¹⁰² Statement of Lt Gen Dallager, Exhibit 71, at 74.

way I felt. If I got a Form 10 it was, well, that's going through. I don't think that's changed in forty years. If a form is coming through, you are going to end up with something."¹¹⁰³

The *Agenda for Change* provision on amnesty will prevent the imposition of discipline on victims for cadet infractions that were part of the circumstances of a sexual assault.

F. Specific Cases Involving Administrative Responses

The Working Group identified some victims who expressed concerns over aspects of the administrative responses to their allegations of sexual assault. Individual victims asserted discontent with administrative hold, medical turnbacks, and squadron changes. What follows is a description of the processes that were used and the basis for each.

1. Administrative Hold

Air Force Instruction 36-2110 allows for deferment of assignments to allow for availability of Air Force members for various reasons.¹¹⁰⁴ For example, it provides a commander the authority to retain an officer for a UCMJ investigation.¹¹⁰⁵ It also allows witnesses to be placed on administrative hold by the Legal Office to ensure the witness's availability for a court-martial or certain non-criminal trials in the United States, state, or federal courts.¹¹⁰⁶ Placement on administrative hold precludes an individual from being reassigned and from being sent on temporary duty (TDY).¹¹⁰⁷

In one case, in 2002, a victim asserted the Training Group Commander placed her on administrative hold and she was unable to leave the Academy while the investigation of her allegation was pending.¹¹⁰⁸ To assist the victim, who still wanted to go home, the Chief of Military Justice at the Academy legal office discussed the idea of an administrative turnback.¹¹⁰⁹ The victim requested to be on administrative turnback¹¹¹⁰ but was told her request was denied by the Training Group Commander because she was still on administrative hold.¹¹¹¹

¹¹⁰³ Statement of Col Eskridge, Exhibit 124, at 45.

¹¹⁰⁴ Air Force Instruction 36-2110, ¶ 2.15; Air Force Instruction 36-2110, Attachment 1, Deferment. The instruction allows for a deferment, defined as [a] personnel management tool, used to preclude or delay assignment selection of an individual or group when in the best interest of the Air Force...When a person has an Assignment Availability Code they are ineligible for reassignment until their date of availability except for a mandatory PCS [Permanent Change of Station] or when the assignment Office of Primary Responsibility (OPR) waives the deferment. See Air Force Instruction 36-2110, Table 2.1.

¹¹⁰⁵ Air Force Instruction 36-2110, ¶ 2.15; Air Force Instruction 36-2110, Table 2.1, Rule 14, Assignment Availability Code.

¹¹⁰⁶ *Id.* at ¶ 2.15 and Table 2.1, Rule 8, Assignment Availability Code 14.

¹¹⁰⁷ *Id.* at ¶ 2.15. Air Force Instruction 36-2120, Attachment 1 [temporary duty (TDY) for assignment purposes, is duty performed at a location other than a person's permanent duty location].

¹¹⁰⁸ See Memorandum for Female Cadet, October 22, 2002, Exhibit 273. See Statement of Academy Legal Office Chief of Military Justice, Exhibit 91, at 5-6; Statement of Colonel, Exhibit 162, at 11.

¹¹⁰⁹ The administrative turnback program is an option for a cadet who may want to temporarily leave the Academy to resolve a temporary hardship. It can prevent resignations of cadets otherwise able to successfully complete graduation and commissioning requirements. Requests for administrative turnbacks are cadet-initiated through the squadron AOC and must be fully supported by the Commandant. Final authority for all administrative turnback requests rests with the Superintendent. USAFA Instruction 36-169, ¶ 2.

¹¹¹⁰ Request for Administrative Turnback, November 18, 2002, Exhibit 274.

¹¹¹¹ See Memorandum for Record, Interview with Former Academy Cadet, February 4, 2003, Exhibit 275, at 5. See also Statement of Colonel, Exhibit 162, at 11.

The victim had been placed on administrative hold by the 34th Training Wing because of her potential to be called as a witness.¹¹¹² Normally only the legal office or AFOSI will initiate such a hold; however, the Chief of Military Justice stated in his interview that he felt the placement of the cadet on administrative hold by the 34th Training Wing was proper under the circumstances.¹¹¹³ The Chief of Military Justice questioned the Training Group Commander's position that an administrative hold precluded the granting of an administrative turnback and directed the matter to the Superintendent for decision, where the administrative turnback was approved.¹¹¹⁴

This specific case is currently under review by the Air Force Inspector General based on the cadet's complaint.

2. Medical Turnbacks and Mental Health Evaluations

One cadet complained that a doctor considering her case in the context of a Cadet Medical Evaluation Board and a medical turnback was improperly influenced by command.¹¹¹⁵ In that case, she requested that she receive a medical turnback in lieu of a medical disenrollment and it was granted by the Superintendent.¹¹¹⁶ The case is being evaluated by the Air Force Inspector General.

A medical turnback is used for a cadet suffering from a temporary disqualifying medical condition to allow him or her to leave the Academy for a specified period of time, usually no more than two semesters, and to then return if the condition can be resolved within that time. A request for medical turnback is typically not cadet-initiated.¹¹¹⁷

Interviews were conducted with the two primary cadet medical evaluators at the 10th Medical Group/Life Skills Center. They advised that during this evaluation process command does not relay what command believes should be the appropriate outcome of a medical evaluation. Though an AOC may give his personal opinion regarding what outcome would be best for the cadet, there is no pressure by command to reach the same conclusion.¹¹¹⁸ Instead, command allows

¹¹¹² Statement of Col Slavec, Exhibit 23, at 84. *See* Memorandum for Female Cadet, October 22, 2002, Exhibit 273; statement of Academy Chief of Military Justice, Exhibit 91, at 5. *See also* Statement of Colonel, Exhibit 162, at 11.

¹¹¹³ Statement of Academy Chief of Military Justice, Exhibit 91, at 5. Cadets are considered officers for purposes of Air Force Instruction 36-2110 providing the 34th Training Wing authority to place the victim on administrative hold as part of a UCMJ investigation. *See* Memorandum for Record, Interview with Academy Legal Office Chief of Military Justice, April 17, 2003, Exhibit 276.

¹¹¹⁴ Statement of Academy Legal Office, Chief of Military Justice, Exhibit 91, at 5-6; *see also* Statement of Colonel, Exhibit 162, at 11; Request for Administrative Turnback, November 18, 2002, Exhibit 274; Memorandum to Superintendent Recommending Turnback, January 22, 2003, Exhibit 277; and AF Form 1768, Staff Summary Sheet, Administrative Turnback, February 3, 2003, Exhibit 278.

¹¹¹⁵ *See* Memorandum for Record, Interview with Former Academy Cadet, February 4, 2003, Exhibit 275, at 3; *see also* Talking Paper on Alleged Sexual Assault, January 24, 2003, Exhibit 279 (cadet was required, as part of mandatory out processing procedures, to attend the Counseling Center for two sessions on July 27, 2001 and July 30, 2001, based on discussions from the first session, she expressed interest in pursuing a medical turnback due to her history of assault). *See also* Request for Administrative Turnback, Exhibit 280; Memorandum for Cadet, Medical Turnback, Exhibit 281; AF Form 1768, Staff Summary Sheet, Re: Discharge of Cadet, Sept. 28, 2001, Exhibit 282; AF Form 1768, Staff Summary Sheet, Re: Discharge of Cadet, July 24, 2002, Exhibit 283.

¹¹¹⁶ AF Form 1768, Staff Summary Sheet, Re: Discharge of Cadet, Sept. 28, 2001, Exhibit 282; Memorandum for Cadet, Medical Turnback, Exhibit 281; Memorandum For Cadet, Administrative Turnback, Sept. 3, 2001, Exhibit 284.

¹¹¹⁷ USAFA Instruction 36-169 ¶ 3.1.

¹¹¹⁸ Statement of Staff Psychiatrist, 10th Medical Group/Life Skills Center, Exhibit 29, at 4.

the doctors to make the call. The commanders describe their concerns and let the doctors determine if it meets criteria for a diagnosis, and if it meets criteria for a cadet medical evaluation board.¹¹¹⁹

Interviews showed no process problems.¹¹²⁰

3. Change of Victim's Squadron After Reporting a Sexual Assault

According to documentary evidence, between 1993 and 2003, five victims have been moved to another squadron after reporting an assault.¹¹²¹ According to the Commandant, individual moves do not occur frequently, but it is not uncommon for a cadet to request a move due to a personality conflict with someone in the squadron. Involuntary moves by cadets also occur; however, they are less frequent.¹¹²² There are neither specific criteria nor a standard policy used in deciding whether to move an alleged victim.¹¹²³ Where both alleged assailants and victims are in the same unit, separating them may be necessary. Reasons provided by command for moving the victim rather than the suspect may include: providing a cadet an opportunity to succeed in a new environment; keeping alleged perpetrators under a command that knows them; and avoiding issues regarding prejudging the accused.

We are aware of one case where an alleged victim of sexual assault complained about being moved to a new squadron after alleging an assault. In this case, a Fourth-Class cadet asserted that after reporting her assault she was told she was being moved though she wanted to stay in her current squadron and with her current roommate.¹¹²⁴ The victim further stated her belief that victims of sexual assaults should not be removed from people who are supportive of them.¹¹²⁵ In this case, the alleged assailants were in the victim's squadron. She believed the alleged assailants should be moved but was told they were not moved because the case was still under investigation and that moving them before it was completed would be treating them as if they were criminals.¹¹²⁶

Although other options were discussed, the Command reported that they moved the victim to a new squadron for her safety and to provide her with a new environment where she could succeed, free of a number of issues that had arisen in her squadron.¹¹²⁷ The Commandant stated that

¹¹¹⁹ Statement of Flight Commander, Life Skills Center, Exhibit 179 at 34-35.

¹¹²⁰ *Id.* at 35-36 (stating command has not really biased him with their thoughts and that if he is to decide whether a person should be disenrolled he wants to give the person the benefit of the doubt; he had never reached conclusion with the commander); see Statement of Staff Psychiatrist, 10th Medical Group/Life Skills Center, Exhibit 29.

¹¹²¹ See Data of Sexual Assault Allegations (cadet-on-cadet allegations), Exhibit 383, Attachment 4. See also Statement of Lt Gen Dallager, Exhibit 71, at 78 (he knows of a handful of alleged victims who have been moved into a new squadron).

¹¹²² Statement of Brig Gen Gilbert Exhibit 10, at 76-77.

¹¹²³ See Statement of Lt Gen Dallager, Exhibit 71, at 78-79. See also Statement of Col Eskridge, Exhibit 124, at 84, 87.

¹¹²⁴ Memorandum for Record, Interview with Former Academy Cadet, February 4, 2003, Exhibit 275 (cadet's request was denied and she was told that she was being moved for safety reasons, she was moved immediately to another room which was as far geographically as is possible at the Academy and was not allowed to interact with cadets from other squadrons) See also Memorandum for Record, Re: Request to be Moved Back to Squadron 34, October 29, 2002, Exhibit 268. See also Statement of Brig Gen Gilbert, Exhibit 10, at 75.

¹¹²⁵ See Memorandum for Record, Interview with Male First-Class cadet, Exhibit 285, (stating his concern over leadership's decision to move the victim to another squadron because a cadet's squadron becomes like family so moving can be traumatic).

¹¹²⁶ See Memorandum for Record, Interview with Former Academy Cadet, February 4, 2003, Exhibit 275, at 4.

¹¹²⁷ Statement of Col Slavec, Exhibit 23, at 157-158. See also Statement of Deputy Training Group Commander, Exhibit 264, at 50-51; Statement of Brig Gen Gilbert, Exhibit 10, at 77; and Memorandum for Record, Interview with Col Slavec, February 27, 2003, Exhibit 272.

after the move was made he received information that CASIE representatives recommended that the victim not be moved. In hindsight, the Commandant would have made sure that everyone was involved including calling the Cadet Counseling Center to receive their input.¹¹²⁸

There are neither criteria nor a set policy used when deciding whether to move alleged assailants to a new squadron. The leadership explained that the alleged assailants were not moved to another squadron because in the past it was viewed as punishing the accused before they have been found guilty of the alleged crime.¹¹²⁹ However, it appears legal advice was not sought by leadership when making the decision in this particular case.¹¹³⁰ The Commandant also reasoned that when a cadet is in trouble, as with her assailants, he likes to keep them with the same squadron commander, who already knows the cadet, and can work the discipline issues.¹¹³¹ It appears that, at a minimum, in this situation, the coordination process contemplated as a function of the Sexual Assault Services Committee, or otherwise, was not occurring.¹¹³²

¹¹²⁸ Statement of Brig Gen Gilbert, Exhibit 10, at 77-78.

¹¹²⁹ Statement of Col Eskridge, Exhibit 124, at 85-86. *See also* Statement of Col Slavec, Exhibit 23, at 159; and Statement of Brig Gen Gilbert, Exhibit 10, at 76-78.

¹¹³⁰ Statement of Staff Judge Advocate, Colonel, Exhibit 162, at 11, (stating that his office was neither involved nor consulted in moving the victim to a new dorm). Memorandum for Record, Telephonic Interview with Academy Legal Office, Chief of Military Justice, Exhibit 286, (stating that neither legal office was consulted by leadership when they were determining whether to move the alleged victim or alleged assailants to a new squadron). Statement of Col Robert Eskridge, Exhibit 124 at 43-44, 85, (He stated that moving the alleged assailants was discussed, however, “the legal guys said no.” He could not remember which judge advocate provided the advice. Colonel Robert Eskridge was not involved in the decision to move the victim.)

¹¹³¹ Statement of Brig Gen Gilbert, Exhibit 10, at 76. *See* Statement of the Deputy Training Group Commander, Exhibit 264, at 50-51. (The Deputy Training Group Commander explained that it was an option to move the alleged assailants, however, she does not like to “move her problem child[ren] on to someone else.”)

¹¹³² For discussion relating to the Sexual Assault Services Committee, *see* this Report, Section VI., Leadership Issues Pertaining to Sexual Assault at the Academy, and Section III.F.3., The Air Force Victim and Witness Assistance Council and the Academy’s Sexual Assault Services Committee. *See generally* statement of Brig Gen Gilbert, Exhibit 10, at 75-78; Statement of Col Eskridge, Exhibit 124 at 84-87.

VI. Leadership Issues Pertaining to Sexual Assault at the Academy

During the ten-year time period reviewed by the Working Group, Academy leadership had varying degrees of involvement in sexual assault issues, ranging from direct focus on assault processes and cases to indirect focus on issues of character and leadership. Beginning with the development of the Academy's program in 1993, Academy Superintendents have been proactively involved in sexual assault issues, however, this direct focus by the Superintendents on sexual assault issues appeared to gradually lessen after 1997, as did that of Commandants, due in part to competing demands. This reduction in focus combined with friction among the Academy's various mission elements, misunderstanding of roles, a discipline environment that was responding to standards of conduct issues and perceived to be harsh, and diminishing activity by the committee responsible for oversight of sexual assault issues, produced an environment less attentive to victim concerns and factors in Academy life affecting sexual assaults, and which was less capable of a coordinated response to individual cases than in earlier years.

A. Command Involvement

As noted, an alleged sexual assault of a female cadet in 1993 caused the Superintendent at the time, Lt Gen Bradley C. Hosmer, to become personally and substantially involved in responding to sexual assaults at the Academy. Based on our interviews, this senior level emphasis and attention to sexual assault issues continued under Lt Gen Paul E. Stein, the Superintendent from 1994 to 1997. According to the Vice Commandant at the time, Lt Gen Stein was interested and concerned about sexual assault issues.¹¹³³

The Sexual Assault Services Committee was created in 1995 and continued the emphasis on a victim-controlled process. Lieutenant General Stein was instrumental in preparing and presenting a briefing to the Surgeon General, the Inspector General and the Judge Advocate General in 1997 that led to the Academy receiving a one-year waiver to the sexual assault reporting requirements in Air Force Instruction 44-102.¹¹³⁴ The Sexual Assault Services Committee was thereafter formally chartered when the Academy implemented USAFA Instruction 51-201 on July 15, 1997, two weeks before Lt Gen Stein relinquished command to Lt Gen Oelstrom.¹¹³⁵ During this time period, to deter and prevent sexual assaults, the Academy provided self-defense training in the sexual assault context, established rules regarding dormitory room doors remaining open when male and female cadets were in the same room, and there were roving patrols of officers and cadets in the dormitories at night.¹¹³⁶ During Lt Gen Stein's tenure, sexual assault was added to the cadet Social Climate Survey.¹¹³⁷

¹¹³³ Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 11. The Victim Advocate Coordinator had a similar opinion. Statement of Victim Advocate Coordinator, Exhibit 182, at 18.

¹¹³⁴ Statement of Victim Advocate Coordinator, Exhibit 182, at 18; Statement of Brig Gen Wagie, Exhibit 198, at 45, 65, 100. Air Force Instruction 44-102 required Air Force personnel involved in the delivery of medical care to report suspected cases of rape or sexual assault to the Air Force Office of Special Investigations, including the names of the parties involved.

¹¹³⁵ USAFA Instruction 51-201 (July 15, 1997) Exhibit 86, and Statement of Lt Gen Oelstrom, Exhibit 63, at 4.

¹¹³⁶ Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 39.

¹¹³⁷ Lieutenant General Stein directed a process action team to develop the 1996 survey and sexual assault questions were included for the first time. See Results of the Social Climate Surveys, 1993-2002, Exhibit 53.

Based on our interviews, it did not appear that Lt Gen Oelstrom had the personal involvement in sexual assault matters that Lt Gen Hosmer and Lt Gen Stein did.¹¹³⁸ Lieutenant General Oelstrom had some recollection of the Sexual Assault Services Committee, but said he did not recall much interface with them nor ever receiving information from them.¹¹³⁹

Lieutenant General Dallager's involvement in sexual assault issues during his tenure as Superintendent, June 2000 to April 2003, is incorporated in the discussion below.

Command involvement with the Sexual Assault Services Committee appeared to have an impact on the Academy sexual assault program. Since its creation in 1995, the Sexual Assault Services Committee¹¹⁴⁰ was the focal point for oversight of the sexual assault processes at the Academy.¹¹⁴¹ The Vice Commandant in 1995 was the first chairperson and she served in that role from November 1995 until May 1998.¹¹⁴² She held monthly meetings, although she thought it might have been twice per quarter toward the end of her tenure.¹¹⁴³ There were two Commandants in this time period and, based on our interviews, both showed a strong interest in the Sexual Assault Services Committee.¹¹⁴⁴ The Vice Commandant from April 1999 to September 2000 recalled meetings were held once a quarter, although other records indicate the meetings were more frequent.¹¹⁴⁵ He briefed the Commandant after each meeting and the Superintendent when significant cases arose.¹¹⁴⁶

In contrast, the Vice Commandant from January 2001 to December 2002 held just five meetings in two years as the Sexual Assault Services Committee chairperson.¹¹⁴⁷ There were just two meetings in 2002 and no meetings between the May 2, 2002 and January 31, 2003 meetings, a

¹¹³⁸ The Victim Advocate Coordinator remembered him attending a briefing in December 1998 where sexual assault data, including sexual assault survey data, was briefed, but that was her only clear recollection of Lt Gen Oelstrom. Statement of Victim Advocate Coordinator, Exhibit 182, at 21-22. The Chief of Sexual Assault Services presented the briefing to the Academy's senior leadership in an effort to secure approval to show a video that was somewhat controversial during Sexual Assault Awareness Month. Lieutenant General Oelstrom approved the request. Statement of Chief of Sexual Assault Services, 1997 to 1999, Exhibit 68, at 2. *See also* this Report, Section III.A., The 1993 Sexual Assault Program.

¹¹³⁹ Statement of Lt Gen Oelstrom, Exhibit 63, at 31.

¹¹⁴⁰ *See* this Report, Section III., The Victim and Witness Assistance Program, for a comprehensive description of the Sexual Assault Services Committee.

¹¹⁴¹ *See* USAFA Instruction 51-201, ¶ 2.4, Exhibit 55.

¹¹⁴² Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 17.

¹¹⁴³ *Id.*

¹¹⁴⁴ According to the former Sexual Assault Services Committee chairperson, Brig Gen Hopper (Commandant from 1994 to 1996) and Maj Gen Lorenz (Commandant from 1996 to 1999), "were very interested in the outcome and they required feedback after the meetings and any time there was any kind of report that was brought up, they both wanted to know instantly." *Id.* at 35. Likewise, Lt Gen Stein (Superintendent from 1994 to 1997) was engaged with the Sexual Assault Services Committee. The former Vice Commandant (1995-1998) said, "General Stein, in particular, was very attuned to what was going on. This was his--I mean he was so concerned over the issue that he wanted to know everything that happened." *Id.* at 36. She also said Lt Gen Oelstrom was briefed when an incident was reported. *Id.* at 20.

¹¹⁴⁵ Statement of Vice Commandant (1999 to 2000), Exhibit 66 at 3 and 10. The next Vice Commandant held a meeting in September 2000 and the minutes reflect monthly meeting dates for the remainder of the year. Sexual Assault Services Committee Meeting Minutes, September 13, 2000, Exhibit 70. The Victim Advocate Coordinator, who was involved throughout this period, noted that the Committee switched to quarterly meetings after the arrival of a new Vice Commandant in 2001. Statement of Victim Advocate Coordinator, Exhibit 50, at 134, 136. The change to quarterly meetings is noted in the minutes for the March 7, 2001 meeting. Sexual Assault Services Committee Meeting Minutes, March 7, 2001, Exhibit 74.

¹¹⁴⁶ Statement, Director of Admissions (Former Vice Commandant) at 12, 16.

¹¹⁴⁷ Sexual Assault Services Committee Meeting Minutes, Exhibit 74 through 80.

period of nearly nine months.¹¹⁴⁸ At the March 7, 2001 meeting, the Vice Commandant announced that the Committee would meet quarterly and the next meeting would be May 9, 2001.¹¹⁴⁹ We found no record of any meeting in May 2001 and it appears the next meeting was not until October 5, 2001.¹¹⁵⁰ The Vice Commandant said he briefed the Commandant after each meeting and he recalled briefing the Superintendent and the Commandant twice a year or when a significant case arose.¹¹⁵¹ The Commandant at the time, Brig Gen S. Taco Gilbert, did not recall receiving information from the Sexual Assault Services Committee.¹¹⁵² Likewise, the Superintendent at the time, Lt Gen Dallager, said he did not receive any regular reports or briefings from the Sexual Assault Services Committee,¹¹⁵³ but he did receive briefings from the Cadet Counseling Center in April and November 2002.¹¹⁵⁴ The briefings included the number of sexual assault reports the Cadet Counseling Center received annually.¹¹⁵⁵

The administration of the Sexual Assault Services Committee did not fully comply with the requirements of USAFA Instruction 51-201 from the time the Instruction was implemented on July 15, 1997. The Instruction designates the Commandant as the Committee's chairperson,¹¹⁵⁶ yet most Commandants, before and after implementation of the Instruction, had little direct involvement with the Committee, and were even less involved as time went on. Major General Stephen R. Lorenz, the Commandant at the time the Instruction was implemented and continuing until June 1999, and then a Brigadier General, said he often chaired the Sexual Assault Services Committee meetings and his Vice Commandant chaired the meetings he could not attend.¹¹⁵⁷ The Chief of Sexual Assault Services in the Cadet Counseling Center from 1997 to 1999 said (then) Brig Gen Lorenz's direct and personal involvement in the Sexual Assault Services Committee gave the committee credibility.¹¹⁵⁸ Brigadier General Lorenz was actively involved and requested his own notebook on

¹¹⁴⁸ Sexual Assault Services Committee Meeting Minutes for February 21, 2002, Exhibit 79, and Sexual Assault Services Committee Meeting Minutes for May 2, 2002, Exhibit 80. The January 31, 2003, meeting was chaired by Col Eskridge who became the Vice Commandant on December 20, 2002. The lengthy delay between the May 2, 2002 and January 31, 2003 meetings was the result of personnel changes and scheduling conflicts. Statement of Col Eskridge, Exhibit 124, at 4, 23-24; Statement of Chief of Sexual Assault Services from 2001 to 2002, Exhibit 83, at 1; Memorandum for Record, Interview with Chief of Sexual Assault Services from 2002 to Present, Exhibit 20, at 1; Statement of Vice Commandant from 2001 to 2002, Exhibit 59, at 3; and Sexual Assault Services Committee Meeting Minutes, Exhibit 74 to 81.

¹¹⁴⁹ Sexual Assault Services Committee Meeting Minutes for March 7, 2001, Exhibit 74.

¹¹⁵⁰ Sexual Assault Services Committee Meeting Minutes for October 5, 2001, Exhibit 77.

¹¹⁵¹ Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 24-25, 29, and 31. The former Sexual Assault Services Committee chairperson said he did a formal Sexual Assault Services Committee briefing for the Superintendent and the senior staff (including the Dean of the Faculty, Commandant, and Athletic Director) in the Spring and a more informal briefing in the Fall as required by USAFA Instruction 51-201. He also recalled forwarding the Sexual Assault Services Committee meeting minutes to the Commandant and the Superintendent, and he believes they signed Staff Summary Sheets indicating they reviewed the minutes. *Id.* at 29.

¹¹⁵² Statement of Brig Gen Gilbert, Exhibit 10, at 52.

¹¹⁵³ Statement of Lt Gen Dallager, Exhibit 71, at 49-50.

¹¹⁵⁴ Statement of Victim Advocate Coordinator, Exhibit 50, at 62; Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2; and Memorandum for Record, Interview with Chief of Sexual Assault Services (2002 to present), Exhibit 20, at 3.

¹¹⁵⁵ Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2-3, and Memorandum for Record, Interview with Chief of Sexual Assault Services (2002 to present), Exhibit 20, at 3. *See* Briefing Slides, Sexual Assault Services, Exhibit 85.

¹¹⁵⁶ USAFA Instruction 51-201, ¶ 2.4, Exhibit 55.

¹¹⁵⁷ Statement of Maj Gen Lorenz, Exhibit 52, at 43. Both of the Vice Commandants who served under Maj Gen Lorenz said they briefed him after each Sexual Assault Services Committee meeting they chaired. *See* Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 35; Statement of Vice Commandant (1998 to 1999), Exhibit 51, at 15.

¹¹⁵⁸ Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2. She said Brig Gen Lorenz's first priority was taking care of sexual assault victims and she described both Brig Gen Lorenz and the Vice Commandant

sexual assaults so he could track trends and he wanted specific information, such as where the incident occurred and whether alcohol was involved, when sexual assaults were reported. He participated in sexual assault awareness functions¹¹⁵⁹ and stayed actively engaged with the personnel involved in the sexual assault response process.¹¹⁶⁰ After (then) Brig Gen Lorenz left in June 1999, the Vice Commandant resumed chairing the Sexual Assault Services Committee meetings as had been the prior practice.

Brigadier General Mark A. Welsh, the Commandant from June 1999 to August 2001, chaired the November 15, 2000 meeting according to the meeting minutes, although he did not recall chairing the meeting nor did he recall the Sexual Assault Services Committee by name.¹¹⁶¹ The Vice Commandant chaired the other Sexual Assault Services Committee meetings.¹¹⁶² Brigadier General Welsh was, however, engaged in working sexual assault issues.¹¹⁶³ Brigadier General Welsh made an effort to meet with the cadets involved in the CASIE program at least once a semester to “encourage them and tell them how important their work was.”¹¹⁶⁴ He was concerned that “there was nothing closing the loop with the command chain,” so he met with the Victim Advocate Coordinator, the AFOSI Commander, the Security Forces Commander, a judge advocate, a CASIE representative, and his Vice Commandant and developed a form for the Cadet Counseling Center to provide information to command on individual cases.¹¹⁶⁵ He also resolved the issue with AFOSI over the Academy not employing the same sexual assault reporting and investigation procedures as the rest of the Air Force, and he met personally with Brig Gen Taylor, the Commander of Headquarters AFOSI, to bring the issue to closure.¹¹⁶⁶

Brigadier General S. Taco Gilbert, the Commandant from August 2001 to April 2003, was familiar with the Sexual Assault Services Committee, but believed the Vice Commandant was the official chairperson.¹¹⁶⁷ He said his predecessor, Brig Gen Welsh, and the Vice Commandant

(1995 to 1998) as being very victim focused. *Id.* at 3, According to the Victim Advocate Coordinator, (then) Brig Gen Lorenz was one of their biggest supporters. Statement of Victim Advocate Coordinator, Exhibit 182, at 26.

¹¹⁵⁹ What started as Sexual Assault Awareness Week was expanded to Sexual Assault Awareness Month in 1997. Statement of Victim Advocate Coordinator, Exhibit 50, at 83.

¹¹⁶⁰ *Id.* at 26-27.

¹¹⁶¹ See Sexual Assault Services Committee Meeting Minutes for November 15, 2000, Exhibit 73. Statement of Brig Gen Welsh, Exhibit 64, at 39-40.

¹¹⁶² Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 10; and statement of Vice Commandant (2001 to 2002), Exhibit 59, at 17.

¹¹⁶³ The Victim Advocate Coordinator said Brig Gen Welsh was personally engaged and participated in the sexual assault response process. As an example, she recalled him addressing the Cadet Wing during Sexual Assault Awareness Month emphasizing the importance of confronting sexual assault issues. Statement of Victim Advocate Coordinator, Exhibit 182, at 27.

¹¹⁶⁴ Statement of Brig Gen Welsh, Exhibit 65, at 10.

¹¹⁶⁵ Statement of Brig Gen Welsh, Exhibit 64, at 28-29; statement of the Vice Commandant (1999 to 2000), Exhibit 66 at 10.

¹¹⁶⁶ Statement of Brig Gen Welsh, Exhibit 65, at 19-21.

¹¹⁶⁷ We found no evidence of a formal delegation of the chair of the Sexual Assault Services Committee to the Vice Commandant, although in practice it was customary prior to implementation of the Instruction and again after Maj Gen Lorenz departed. While it is not improper to delegate this duty to the Vice Commandant, it appears this informal practice became a custom that eventually led to the mistaken belief the Commandant was intentionally excluded from the Sexual Assault Services Committee. Statement of Brig Gen Gilbert, Exhibit 10, at 49-52. In addition to the Commandant serving as the Committee’s chairperson, USAFA Instruction 51-201, ¶ 2.8.1.2.1, designated the Commandant as the senior official the Counseling Center must notify when a sexual assault was reported. The same requirement for the Counseling Center to notify the Commandant was also expressly stated in the May 22, 1997 waiver the Academy received from the Surgeon General permitting them to deviate from normal Air Force sexual assault

briefed him that the Vice Commandant served as the Sexual Assault Services Committee chairperson and it was “his program, not mine.”¹¹⁶⁸ He believed this arrangement was intended to isolate victim support from the command element.¹¹⁶⁹ As a result, Brig Gen Gilbert was not involved with the Sexual Assault Services Committee and did not recall receiving any information directly from them.¹¹⁷⁰ He did recall receiving some abbreviated information from the Cadet Counseling Center relating to individual reports of sexual assault beginning in early 2003, but he returned the forms to them asking what he was supposed to do with them since they essentially provided him no useful information.¹¹⁷¹ The Victim Advocate Coordinator said she never briefed Brig Gen Gilbert on any sexual assault issues.¹¹⁷² Brigadier General Gilbert noted that he was involved in working issues related to specific cases that came to his attention and implemented changes to address gender and character issues, for example, by enhancing the character development education and training programs through the Character Development Center and the 34th Education Group.¹¹⁷³

Brigadier General Gilbert was absent from the Cadet Wing for most of Academic Year 2002-2003.¹¹⁷⁴ He attended CAPSTONE (a six-week course for new General officers) from September 26, 2002 to November 12, 2002.¹¹⁷⁵ This appears to be a routine practice as both (then) Brig Gen Lorenz and Brig Gen Welsh attended CAPSTONE during their terms as Commandant. Brigadier General Gilbert left on official temporary duty away from the Academy shortly after he returned from CAPSTONE and then the cadets were away for Thanksgiving and Christmas breaks. Brigadier General Gilbert was on convalescent leave the month of January 2003 due to complications following what he thought would be minor surgery.¹¹⁷⁶ The combination of official

reporting requirements. Temporary Limited Waiver of Air Force Instruction 44-109 Reporting Requirements, Exhibit 129.

¹¹⁶⁸ Statement of Brig Gen Gilbert, Exhibit 10, at 51-52.

¹¹⁶⁹ *Id.* at 50. Colonel Eskridge, the Vice Commandant from December 2002 to April 2003, said it was tradition for the Vice Commandant to serve as the Sexual Assault Services Committee chairperson because the Vice Commandant is not directly in the chain of command but can provide a link between the sexual assault services system and command. Statement of Col Eskridge, Exhibit 124, at 22.

¹¹⁷⁰ Statement of Brig Gen Gilbert, Exhibit 10, at 49-53.

¹¹⁷¹ *Id.* at 47-48. Brigadier General Gilbert said the form contained too little information to be useful to command and he viewed it as a “cover your ass” type document that would permit the Counseling Center to show they notified the Commandant but provided no useful information. *Id.* For examples of the tracking forms *see* Sexual Assault Tracking Sheets, Exhibit 301.

¹¹⁷² Statement of Victim Advocate Coordinator, Exhibit 182, at 30, 32.

¹¹⁷³ Statement of Brig Gen Gilbert, Exhibit 10, *Id.* at 20-22. He described his direct involvement in six specific sexual assault cases that occurred during his tenure. *Id.* at 109-123. He believed loyalty among cadets was improperly centered on loyalty to fellow cadets rather than higher values, and he attempted to instill a hierarchy based upon loyalty to values, loyalty to the unit’s mission, and then loyalty to individuals. *Id.* at 13, 83.

¹¹⁷⁴ Brigadier General Gilbert became the Commandant in August 2001. Statement of Brig Gen Gilbert, Exhibit 10, at 6-7. The Fall semester of academic year 2002-2003 began on August 3, 2002 and ended on December 19, 2002. The Spring semester began January 2, 2003. Fall Semester 2002 and Spring Semester 2003 Calendar, Exhibit 287. *See also*, Chart, Re: Commandant Duty/TDY/Leave Schedule, Exhibit 288. Brigadier General Gilbert said that due to CAPSTONE and his medical problem, “I have not seen the cadets a lot this year (academic year 2002-2003).” Statement of Brig Gen Gilbert, Exhibit 10, at 94.

¹¹⁷⁵ According to records, Brig Gen Gilbert was away on leave, temporary official duty away from the Academy, or medical convalescent leave 153 of the 615 days, twenty-five percent of the time, he was assigned as the Commandant. In comparison, Brig Gen Welsh was away twenty percent of the time and (then) Brig Gen Lorenz was away fourteen percent of the time when they were the Commandants. Major General Lorenz attended CAPSTONE from February 3, 1997 to March 14, 1997. Brigadier General Welsh attended CAPSTONE from January 31, 2000 to March 10, 2000. *See* Chart, Re: Commandant Duty/TDY/Leave Schedule, Exhibit 288.

¹¹⁷⁶ Statement of Brig Gen Gilbert, Exhibit 10, at 94.

duty away from the Academy, Academy holiday periods, and an extended medical absence, meant he was physically unable to have significant involvement during much of this academic year.

USAFA Instruction 51-201 does not require the Sexual Assault Services Committee to meet on a regular basis. Instead it provides for meetings to occur on an “as needed” basis.¹¹⁷⁷ The frequency of the meetings declined from monthly during the tenure of the chairperson from 1995 to 1998, to quarterly beginning in 2001, to twice a year in 2002. A consequence of the decline in the frequency of the meetings was less information being available to command. For example, Brig Gen Welsh said, “the issues that were raised in that meeting [the Sexual Assault Services Committee] very often were topics of discussion in ‘Cops and Robbers’ meetings and in the next Senior Staff Meeting.”¹¹⁷⁸ Likewise, USAFA Instruction 51-201 requires the Sexual Assault Services Committee to provide biannual reports on sexual assault issues to the Superintendent and other senior leaders,¹¹⁷⁹ yet as noted, neither the Superintendent, Lt Gen Dallager nor the Commandant, Brig Gen Gilbert recalled receiving such reports and the Working Group could find no record of such reports prior to the April 2002 briefing.¹¹⁸⁰

Lieutenant General Dallager said he viewed the Sexual Assault Services Committee as the “fusion point” for the Academy’s sexual assault services program and his view is consistent with the Committee’s charter in USAFA Instruction 51-201.¹¹⁸¹ A factor that appeared to hinder melding the Committee into an effective, integrated group was the frequency with which its leadership changed. During the five and a half year period Lt Gen Oelstrom and Lt Gen Dallager were the Superintendents, there were six Vice Commandants,¹¹⁸² and four Chiefs of Sexual Assault Services in the Cadet Counseling Center.¹¹⁸³ In Lt Gen Dallager’s thirty-three months as Superintendent, there were four different Vice Commandants and three different Chiefs of Sexual Assault Services.¹¹⁸⁴ Changing the Sexual Assault Services Committee’s principal leader and its

¹¹⁷⁷ USAFA Instruction 51-201, ¶ 2.4, April 18, 2000, Exhibit 55.

¹¹⁷⁸ Statement of Brig Gen Welsh, Exhibit 65, at 23.

¹¹⁷⁹ The original version of the instruction required the Sexual Assault Services Committee to submit quarterly reports to the Superintendent. USAFA Instruction 51-201, ¶ 2.4 (July 15, 1997) Exhibit 86. The requirement for reports to the Superintendent decreased to twice per year when the instruction was revised less than three years later.

¹¹⁸⁰ Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2.

¹¹⁸¹ Statement of Lt Gen Dallager, Exhibit 71, at 49; USAFA Instruction 51-201, ¶ 2.4, Exhibit 55.

¹¹⁸² Statement of Vice Commandant (1995 to 1998), Exhibit 46, at 5-6, 17; Statement of the Vice Commandant (1998 to 1999), Exhibit 51, at 5; Statement of the Vice Commandant (1999 to 2000), Exhibit 66, at 3-4; Statement of the Director of Admissions, Exhibit 289, at 1 (Note: The Director of Admissions served previously as the Vice Commandant. In his statement concerning his tenure as the Vice Commandant he initially said he served in that role until 2001, but later said it was until 2000. In his statement concerning his tenure as the Director of Admissions he said he moved to that job in 2000. The person he replaced as Director of Admissions retired in September 2000. That and other statements show his tenure as Vice Commandant ended in 2000); Sexual Assault Services Committee Meeting Minutes for September 13, 2000, Exhibit 70; Statement of the Vice Commandant (2001 to 2002), Exhibit 59, at 3; Statement of Col Eskridge, Exhibit 124, at 4.

¹¹⁸³ Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 1; Statement of Chief of Sexual Assault Services (1999 to 2001), Exhibit 82, at 1; Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 1; and Statement of Chief of Sexual Assault Services (2002 to present), Exhibit 20, at 1.

¹¹⁸⁴ Statement of Vice Commandant (1999 to 2000), Exhibit 66, at 3; Statement of Vice Commandant (2000 to 2001), Exhibit 261, at 2; Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 3; Statement of Col Eskridge, Exhibit 124, at 4. Statement of Chief of Sexual Assault Services from 1999 to 2001, Exhibit 82, at 1; Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 1; Statement of Chief of Sexual Assault Services (2002 to present), Exhibit 20, at 1. The Chief of Sexual Assault Services from 2001 to 2002 was on maternity leave in May 2002 and left the Academy in July 2002. Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 1-2. She was out frequently due to medical difficulties. Statement of Victim Advocate Coordinator, Exhibit 182, at 30. Her

primary action officer so frequently apparently, negatively impacted the ability of these individuals to assimilate the intricacies of the Academy's unique sexual assault program and fuse the separate pieces into an effective, responsive operation.

As noted earlier, the Academy never fully complied with the express terms of USAFA Instruction 51-201 with respect to the Sexual Assault Services Committee. It was apparent from Brig Gen Gilbert's statement, "it was his (the Vice Commandant's) program, not mine,"¹¹⁸⁵ that he believed the Vice Commandant was responsible for the Sexual Assault Services Committee and he was by design excluded from the process.¹¹⁸⁶ This perceived exclusion frustrated him and he complained to Lt Gen Dallager about the lack of information available to him as a commander and his view that "the system was broken."¹¹⁸⁷ As a result, Brig Gen Gilbert proposed moving the Department of Behavioral Sciences and Leadership from the Dean of the Faculty to the Training Wing or, in the alternative, move the Cadet Counseling Center from the Department of Behavioral Sciences and Leadership to the 10th Air Base Wing in order to provide command better access to information on sexual assaults.¹¹⁸⁸ Lieutenant General Dallager expressed some reservations, but told him he could discuss it with the Dean of the Faculty.¹¹⁸⁹ The Dean did not concur with the proposal and Lt Gen Dallager did not support Brig Gen Gilbert's request.¹¹⁹⁰ (Note: The *Agenda for Change* makes one of the changes Brig Gen Gilbert advocated.)

B. Shift of Command Focus

During recent years, a number of significant events occurred in succession, both internal and external to the Academy, which over time diverted command's attention away from sexual assault issues.¹¹⁹¹ Brigadier General Wagie has been involved in the Academy's efforts to address sexual assault issues over the past decade.¹¹⁹² He said Lt Gen Hosmer and Lt Gen Stein "really pushed" working sexual assault issues in the 1993 to 1996 period, but then a series of events — aircraft accidents at the Academy, honor issues, the September 11, 2001 terrorist attacks — caused some shift in focus to other areas.¹¹⁹³

replacement did not arrive until several months later leaving the position vacant for about five months. Statement of Victim Advocate Coordinator, Exhibit 50, at 125 and 137.

¹¹⁸⁵ Statement of Brig Gen Gilbert, Exhibit 10, at 52.

¹¹⁸⁶ *Id.*

¹¹⁸⁷ *Id.* at 53.

¹¹⁸⁸ *Id.* at 53-55.

¹¹⁸⁹ Statement of Lt Gen Dallager, Exhibit 71, at 141. Lieutenant General Dallager acknowledged Brig Gen Gilbert expressed frustration with the lack of information he received and recalled his proposal to move the Counseling Center under his supervision. Lieutenant General Dallager said he discussed the proposal with some prior Superintendents and others, and the consensus was moving the Center under the Commandant would undermine cadet confidence in confidentiality. *Id.*

¹¹⁹⁰ Brigadier General Gilbert discussed the proposal with the Dean of the Faculty and the Head of the Department of Behavioral Sciences and Leadership, and they did not agree with the proposed move. Statement of Brig Gen Gilbert, Exhibit 10, at 54-55. Major General Lorenz attempted to have the Counseling Center moved back to the Training Wing when he was the Commandant and he, too, was unsuccessful. Statement of Maj Gen Lorenz, Exhibit 52, at 31.

¹¹⁹¹ Statement of Brig Gen Wagie, Exhibit 198, at 111-113.

¹¹⁹² Brigadier General Wagie, a 1972 Academy graduate, was involved in creating the Center for Character Development in 1993 at the direction of Lt Gen Hosmer, serving as its Director from 1994 to 1996, and was at the meeting Lt Gen Stein held in 1997 with members of the Air Staff to obtain a waiver to allow the Academy to implement the unique sexual assault response process currently outlined in USAFA Instruction 51-201. *Id.* at 2-4, 44-45 and 111-112.

¹¹⁹³ *Id.* at 112-113. He said: "But I think looking back, we built some momentum (in addressing sexual assault issues) and then I think we just kind of leveled off and said, 'I think things are going pretty well.' Then we build some

Brigadier General Gilbert described the impact of the September 11, 2001 terrorist attacks on the Academy. He said the Academy is a highly symbolic target and was designed to be open and accessible, which made it vulnerable. Following the attacks, cadets were assigned to security details to protect the cadet area and checkpoints had to be established. Privately owned vehicles were ordered out of the cadet area, which eliminated 1,500 parking spaces. Union problems arose because of the tightened security.¹¹⁹⁴ He described a number of other issues that occupied large portions of his time, including a major drug investigation that led to several cadets facing courts-martial, unprofessional conduct by members of the Academy's parachuting team, safety issues related to twenty to thirty thousand glider sorties and fifteen to twenty thousand parachute jumps per year, problems with food services following a freeze on filling civilian personnel vacancies, and the disruption caused by an A-76 reorganization that resulted in the 34th Support Group moving from the Training Wing to the 10th Air Base Wing.¹¹⁹⁵ He also described efforts he took to address issues indirectly related to sexual assault, such as altering the character education program to ensure each class had character seminars to support their classroom character education and enhancing the Human Relations Officer program to ensure top quality cadets were chosen for those positions.¹¹⁹⁶ Lieutenant General Dallager also described competing demands placed on his time, which did not allow him to focus on sexual assault issues.¹¹⁹⁷

A declining manpower environment appeared to be an issue that was accentuated with an event like September 11th that placed unexpected demands on time, resources and manpower. Colonel Eskridge said one reason problems with the sexual assault portion of the cadet Social Climate Survey were not remedied was not having sufficient manpower to devote to the task.¹¹⁹⁸ Likewise, the Deputy Commander of the 34th Training Group acknowledged that data exists that could allow someone to track disciplinary trends, like alcohol related incidents, but she added, "We could do that if we had more manpower. Right now our manpower just does not allow us to do that."¹¹⁹⁹ She said that as of March 2003 the Training Group is manned at about ninety-two to ninety-four percent of its authorized manpower allocation.¹²⁰⁰

Based on our interviews, it appears that a poor working relationship and lack of communication among the Academy's senior leadership became impediments to their ability to work together and this appeared to extend to their ability to provide a coordinated, integrated response to sexual assaults. Several expressed their frustration including Brig Gen Gilbert.¹²⁰¹ He

momentum and we level off. I think we...have been distracted by other events, Honor issues, aircraft accidents, 9-11 issues, security issues and in some ways haven't kept eyeball to eyeball with the cadets." *Id.*

¹¹⁹⁴ Statement of Brig Gen Gilbert, Exhibit 10, at 16. Cadets worked security details until they left for Christmas break in mid-December 2001. The union problems are ongoing. *Id.*

¹¹⁹⁵ Memorandum from Brig Gen Gilbert, March 25, 2003, Exhibit 290.

¹¹⁹⁶ *Id.*

¹¹⁹⁷ Statement of Lt Gen Dallager, Exhibit 71, at 25.

¹¹⁹⁸ Statement of Col Eskridge, Exhibit 124, at 12.

¹¹⁹⁹ Statement of the Deputy Commander, 34th Training Group, Exhibit 264, at 34-35.

¹²⁰⁰ *Id.* at 35.

¹²⁰¹ The Athletic Director expressed frustration in his dealings with Brig Gen Gilbert. He believed Brig Gen Gilbert "has made up his mind where we're going to go with the Academy" and he did not take the views of the Dean of the Faculty or the Athletic Director into consideration. Statement of Athletic Director, Exhibit 199, at 30. The Athletic Director expressed frustration with the lack of coordination by Brig Gen Gilbert and the Training Wing staff, and said "we've always before coordinated with each other." *Id.* at 34. He believed the Training Wing disregarded comments provided from other elements. *Id.* at 29. The Athletic Director had been in his current position for seven years. *Id.* at 4. The Dean of the Faculty said, "I think at senior levels, there had been a lot less communication over the last year, two years.... We don't have the kind of interaction socially, or the kind of, 'let me bounce this off of you' kind of

came to the Academy with what he viewed as clear “marching orders” from the Chief of Staff of the Air Force to restore discipline and standards within the Cadet Wing.¹²⁰² General (ret) Michael E. Ryan, the Chief of Staff of the Air Force at the time, confirmed that he met with Brig Gen Gilbert prior to his departure for the Academy and told him, “I thought the discipline at the Air Force Academy was not up to the standard that should be expected,”¹²⁰³ and “I wanted to pay particular attention to the fact that this was a military institution as well as an academic institution.”¹²⁰⁴ Brigadier General Gilbert assumed the Chief of Staff conveyed the same message to Lt Gen Dallager since the Superintendent reports to the Chief of Staff.¹²⁰⁵ Lieutenant General Dallager said General Ryan did not tell him that he was sending Brig Gen Gilbert to the Academy with a mandate to restore discipline and General Ryan did not recall talking with Lt Gen Dallager at that time, but he did recall expressing similar concerns to Lt Gen Dallager upon his appointment as Superintendent.¹²⁰⁶ When Brig Gen Gilbert met resistance in trying to implement changes to carry out the Chief of Staff’s guidance, he was frustrated. He said, I was “trying to act on the charter that I had been given by General Ryan and where I felt the Chief of Staff had told me he had wanted me to take the Cadet Wing. There was a consistent resistance from the other mission elements.”¹²⁰⁷

In January 2003, Lt Gen Dallager decided to convene a “family summit” with the senior staff in an effort to resolve the tension among the mission elements, which he described as being “as bad as I’ve seen it in the time that I’ve been here.”¹²⁰⁸ He believed the primary source of the friction was the Training Wing.¹²⁰⁹ Lt Gen Dallager commented further, “The necessity of working across mission elements, as we’ve described, is critical here, because the training wing doesn’t own all the resources.”¹²¹⁰ This lack of cooperation appeared to have a direct impact on the Sexual Assault Services Committee, which consists of representatives from three of the four mission elements and members of the Superintendent’s staff where cooperation and communication are paramount to the Committee’s effectiveness.¹²¹¹ The Vice Commandant from 2001 to 2002 and a

discussions.” Statement of Brig Gen Wagie, Exhibit 198, at 79. The 10th Air Base Wing Commander was the most recent addition to the senior staff, having arrived in late October 2002. He had no direct complaints, however, the Security Forces Commander complained to him about problems getting information out of the Training Wing and a lack of access to the Cadet Wing. Statement of 10th Air Base Wing Commander, Exhibit 257, at 2. The 10th Air Base Wing Commander said he detected friction between Brig Gen Gilbert and the Athletic Director in the senior staff meetings and he described their relationship as “icy.” *Id.*

¹²⁰² Statement of Brig Gen Gilbert, Exhibit 10, at 7-8.

¹²⁰³ Statement of Gen (Ret) Michael E. Ryan, Exhibit 76, at 4.

¹²⁰⁴ *Id.* at 3.

¹²⁰⁵ Statement of Brig Gen Gilbert, Exhibit 10, at 12-13.

¹²⁰⁶ Statement of Lt Gen Dallager, Exhibit 71, at 106; Statement of Gen (Ret) Michael E. Ryan, Exhibit 76, at 4.

¹²⁰⁷ Statement of Brig Gen Gilbert, Exhibit 10, at 87. In Brig Gen Gilbert’s opinion, part of the problem was the lack of a clear vision of what the Academy’s mission was and where it was headed. *Id.* at 86-87.

¹²⁰⁸ Statement of Lt Gen Dallager, Exhibit 71, at 109. The meeting took place at Brig Gen Gilbert’s quarters where he was on convalescent leave following surgery. In Brig Gen Gilbert’s view, Lt Gen Dallager and the elements representatives spent several hours telling him “I wasn’t playing well in the sand box.” Statement of Brig Gen Gilbert, Exhibit 10, at 87. Some thought the meeting was productive. *See* statement of 10th Air Base Wing Commander, Exhibit 257, at 3. Others thought Brig Gen Gilbert was defensive and the meeting did not improve the situation. *See* Statement of Athletic Director, Exhibit 199, at 37. The meeting lasted about three hours. *Id.* at 35.

¹²⁰⁹ Statement of Lt Gen Dallager, Exhibit 71, at 119.

¹²¹⁰ Statement of Lt Gen Dallager, Exhibit 71, at 122.

¹²¹¹ USAFA Instruction 51-201, ¶ 2.4, Exhibit 55. *See also*, Statement of Vice Commandant (2001 to 2002), Exhibit 59, at 17-18. He explained that the Dean of the Faculty has overall responsibility for the Sexual Assault Services Committee. The Commandant is responsible for character development. The Training Group Commander is responsible for cadet discipline and cadet military training. Legal support for dealing with criminal conduct and medical care is provided by the 10th Air Base Wing. Legal services for cadet conduct that could result in disenrollment

former Sexual Assault Services Committee chairperson, said, “It took tremendous leadership and coordination to bring these various blocks together into a coherent committee.”¹²¹² It was during this period of senior staff discord that the Sexual Assault Services Committee went nearly nine months without meeting.¹²¹³

C. Training Wing Discipline

Based on our interviews, since the arrival of Brig Gen Gilbert in August 2001, and particularly since the arrival of Col Slavec in May 2002, there appeared to be a perception among cadets, faculty and leadership that the imposition of punishment upon cadets increased significantly. Lieutenant General Dallager said he received feedback from a variety of sources, including cadets and AOCs, that “in trying to put the ‘M’ back in military, the environment has been — I don’t say this flippantly — it’s been tough love without the love portion and that it’s a bit of the leadership by Form 10 environment....”¹²¹⁴ Brigadier General Gilbert recognized the perception as well. He initiated steps soon after his arrival to enhance discipline and standards, and he acknowledged that initially punishments had increased. He explained, however, that in his view he did not change the standards, he enforced existing standards that had been allowed to slip over time.¹²¹⁵ He also said that a perception arose after Col Slavec took command that “discipline was overly draconian, and not fair....”¹²¹⁶

Based on the Working Group’s interviews, the perception of a strict discipline environment appears to have been present throughout the Academy. Cadets interviewed, both male and female, said they believed senior leadership’s focus was on discipline.¹²¹⁷ A female cadet thought there was a punishment mentality at the Academy. She described hearing Colonel Slavec give a terse response to a question at an “open door meeting” with cadets, which led her to question, “Why would anyone want to report to the chain of command about a sexual assault when you get this kind of reaction when you are asking about new regulations?”¹²¹⁸ A faculty member expressed his view that the Training Wing and Training Group believed the way to fix a problem was to keep increasing the punishment until the problem stopped, and cadets, Military Training Leaders (MTL), and AOCs were in fear.¹²¹⁹ Cadets interviewed related an apparently widespread belief that reporting offenses to Academy officials was likely to result in disciplinary action against the cadet who came forward, if infractions by that cadet were involved, with a negative impact on the cadet’s Academy career.¹²²⁰ A male MTL said the severity of punishment increased significantly over the

is provided by Headquarters USAFA. He said, “So, environmentally, as far as how this thing is structured, it’s very bureaucratic.” *Id.* at 18.

¹²¹² *Id.* at 20.

¹²¹³ See Sexual Assault Services Committee Meeting Minutes for May 2, 2002 and January 31, 2003, Exhibits 80 and 81. See also E-mail from Renee Trindle to Dr. James G. Roche, January 2, 2003, Exhibit 1.

¹²¹⁴ Statement of Lt Gen Dallager, Exhibit 71, at 84.

¹²¹⁵ Statement of Brig Gen Gilbert, Exhibit 10, at 68.

¹²¹⁶ *Id.* at 74.

¹²¹⁷ Memorandum for Record, Interview with Female Third-Class cadets, Exhibit 291, at 2; Memorandum for Record, Meeting with Male First-Class cadets, Exhibit 292, at 1.

¹²¹⁸ Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 291, at 1-2.

¹²¹⁹ Memorandum for Record, Interview with Lt Col, Faculty Member, Exhibit 225, at 2-3.

¹²²⁰ For cadet perceptions, see Memorandum for Record, Interview with Female Fourth-Class cadet, Exhibit 148. She described what she believed was excessive punishment for her infractions disclosed during the investigation of an alleged rape of one of her friends. As a result, she would not recommend female cadets report sexual assaults or anything else to Academy officials. She opined that when a cadet comes to the attention of the Academy’s leadership and is considered a troublemaker, they are subjected to close scrutiny and can never recover. *Id.* See also,

past year and, while no one ever told him why, he suspected it was an effort to address too much leniency under the previous leadership. He said, prior to January 2003, women who reported sexual assaults were punished for cadet infractions they committed and, while the policy had now been changed, he thought female cadets were still afraid to come forward.¹²²¹ Various individuals reported a lack of rapport between Col Slavec and the AOCs, MTLs, and cadets.¹²²² An AOC believed cadets would not report offenses because they were afraid of punishment.¹²²³

The belief that punishment increased significantly after the arrival of Brig Gen Gilbert and Col Slavec was more perception than reality. An analysis of the more serious cadet disciplinary actions (Class C and D “hits”)¹²²⁴ over the past five academic years shows the total number of these actions per year during Brig Gen Gilbert’s tenure were generally consistent with those under his predecessor, Brig Gen Welsh, and the last year of Brig Gen Welsh’s predecessor, (then) Brig Gen Lorenz.¹²²⁵ During Brig Gen Welsh’s final year as Commandant, the 2000-2001 academic year, there were 951 cadet disciplinary actions, the highest in the five-year period. The average number of actions during the 1998 through 2001 academic year period in which (then) Brig Gen Lorenz and Brig Gen Welsh were the Commandants was 639 per year.¹²²⁶ There were 600 actions in Brig Gen Gilbert’s first year as Commandant and projected to be 378 his second year.¹²²⁷ That is an average of 489 actions per year, which is one-fourth below the average for the preceding three-year period. By this measure, the belief that more cadets were being punished (at least regarding the upper range of punishments) during Brig Gen Gilbert’s tenure is not supported by the data. Interestingly, the projected total for academic year 2002-2003, the year in which Col Slavec served as Commander of the 34th Training Group, is the lowest of all five years.¹²²⁸

What likely caused the perception of a harsher disciplinary environment is the amount of punishment imposed when action was taken. Annual averages for restrictions, demerits and tours for Class C and D “hits” reached the highest levels of the five-year period during the last few

Memorandum for Record, Group Interview with Female Third-Class cadets, Exhibit 56 (would not report sexual assault because leadership does not support victims and in one case the victim was punished while nothing happened to her assailant); Memorandum for Record, Group Interview with Female Fourth-Class cadets, Exhibit 24 (there are negative repercussions for cadets that report sexual assaults, including “hits” for their actions and ostracism by fellow cadets); Summarized Statement of Female First-Class cadet, Exhibit 19 (this CASIE representative said some cadets believe that if they inform leadership about an incident then they will get themselves into trouble). *But see* discussion in text that follows.

¹²²¹ Statement of Male Military Training Leader, Exhibit 133, at 3.

¹²²² Memorandum for Record, Interview with Female Third-Class cadet, Exhibit 291, at 1-2; Statement of 34th Training Wing Superintendent, Exhibit 54, at 4.

¹²²³ Statement of Male AOC, Exhibit 36, at 6.

¹²²⁴ The Working Group was unable to locate Academy punishment trend analyses over time and prepared one using best available data going back five years. *See* Trend Analysis of Discipline Data, Exhibit 147 for the complete analysis. The data are for class C and D cadet infractions only. Cadet disciplinary punishments are divided into four categories, A through D, with an increasing range of severity. Data was not available for the less significant (Class A and B “hits”) cadet infractions. Class C and D infractions are the two most serious classes of infractions handled through the cadet disciplinary system. Punishment can include confinement (a period where the cadet must stay in his or her dormitory room; one confinement equals one hour and fifty minutes); restriction (prohibiting the cadet from leaving the cadet area of the Academy; measured in days); tours (cadet is required to march with a rifle; one tour equals one hour of marching); and demerits (a reference mark of conduct or deportment; a cadet accumulating 100 demerits in a moving six-month period may be considered for elimination from the Academy). *See* AF Cadet Wing Instruction 51-201, Discipline and Probation System, Exhibit 265; Chart, Re: Commandant Duty/TDY/Leave Schedule, Exhibit 288.

¹²²⁵ Trend Analysis of Discipline Data, Exhibit 147. Complete data was only available from 1998 forward. *Id.*

¹²²⁶ *Id.* There were 1,916 actions in the three-year period for an average of 639 per year.

¹²²⁷ *Id.* The number for the second year is a projection based upon data as of February 20, 2003.

¹²²⁸ *Id.*

years.¹²²⁹ Taken as a whole, however, the amount of punishment imposed under Brig Gen Gilbert was not disproportionate compared with prior Commandants. The amount of confinement and restriction in Brig Gen Gilbert's first year was about the same as the prior year under Brig Gen Welsh.¹²³⁰ In his second year, averages for confinement and restriction dropped to the lowest levels since (then) Brig Gen Lorenz was the Commandant in the 1998-1999 academic year. Demerits and tours imposed in Brig Gen Gilbert's first year were comparable to the two years in which Brig Gen Welsh served as Commandant and significantly below the level in (then) Brig Gen Lorenz's final year.¹²³¹ On the other hand, the average amount of demerits and tours awarded in Brig Gen Gilbert's second year were significantly higher than his first year and significantly higher than both years under Brig Gen Welsh. They were not, however, inconsistent with the average for demerits and tours in (then) Brig Gen Lorenz's final year.¹²³²

These comparisons suggest that the increase in the average period of restriction in Brig Gen Gilbert's first year and the increase in demerits and tours in his second year created a perception that punishment had become disproportionate relative to prior leadership. The Academy's most senior cadets at the time, the Class of 2003, only had the preceding period under Brig Gen Welsh as a basis for comparison, and by comparison it would have appeared to be a substantial increase in punishment. Despite the fact that substantially fewer cadets received punishment, the increase in the average amount of demerits and tours awarded as punishment compared with Brig Gen Welsh's era could have led many to believe the Training Wing and Training Group followed "leadership by Form 10."¹²³³

Notwithstanding the data, those interviewed by the Working Group perceived a harsh disciplinary environment, which, coupled with the widely held view that the leadership of the command element was stern and unapproachable, led some cadets to believe it may not have been in their best interest to report misconduct for fear of bringing punishment upon themselves. Many MTLs, AOCs, and faculty members held the same belief, which provided a disincentive for them to foster an environment that would lead cadets to believe they should report infractions to command. This coupled with other factors, including fear of peer reprisal, led to an environment that may have deterred the reporting of incidents of sexual assault.¹²³⁴

D. Recent Data Available to Command

Based on the information obtained by the Working Group, during the last few years Academy leadership was not regularly briefed by elements of the Academy staff on issues pertaining to incidents of sexual assault. The Chief of Sexual Assault Services briefed Lt Gen

¹²²⁹ *Id.* Restrictions averaged 7.14 days in Brig Gen Gilbert's first year. The next highest average was 4.98 days in Brig Gen Welsh's final year. Demerits averaged forty-seven per punishment imposed during Brig Gen Gilbert's second year. The next highest average was forty-four demerits in (then) Brig Gen Lorenz's final year. Tours averaged forty-two per punishment imposed in Brig Gen Gilbert's second year. The next highest average was forty in (then) Brig Gen Lorenz's final year. The highest average for confinements was 6.19 days during Brig Gen Welsh's final year. The average was 6.14 in Brig Gen Gilbert's first year and 3.32 in his second year.

¹²³⁰ *Id.*

¹²³¹ *Id.*

¹²³² *Id.*

¹²³³ See statement of Lt Gen Dallager, Exhibit 71, at 84.

¹²³⁴ Lieutenant General Dallager believed the perception that punishment had increased acted as a deterrent to cadets reporting sexual assaults. Statement of Lt Gen Dallager, Exhibit 71, at 90-91. See also Social Climate Surveys, this Report, Section IV.A., in which the fear of reprisal for reporting sexual harassment in most years exceeded 70%. But, there were a number of indicators that reports of sexual assault were actually increasing. See this Report, Section IV.D.

Dallager, Brig Gen Gilbert, Brig Gen Wagie and other senior leaders, in April 2002.¹²³⁵ She presented a slide showing the number of sexual assaults reported to the Cadet Counseling Center in each academic year from 1985 through 2002.¹²³⁶ The slide showed twenty-three reported sexual assaults in the 2001-2002 academic year, the highest number of any year in the seventeen-year period. It reflected an increase from eight reports of sexual assault per year in both the 1999-2000 and 2000-2001 academic years.¹²³⁷ Lt Gen Dallager commented that this could be taken in a negative manner.¹²³⁸ The Chief of Sexual Assault Services did not interpret this as a negative statement, and she agreed the data could easily be misconstrued.¹²³⁹ She interpreted the data as a positive indication that cadets had confidence in the Academy's sexual assault services program and were coming forward in greater numbers, although in her interview, she acknowledged it might also represent an increase in the number of sexual assaults taking place.¹²⁴⁰ Lieutenant General Dallager was concerned whether the increase in reporting meant more assaults were occurring or just reflected more willingness by victims to come forward, as suggested, and he was frustrated with the Cadet Counseling Center's inability to tell him what the increased reports represented. When asked if the Cadet Counseling Center had ever been able to answer his question, Lt Gen Dallager said, "No."¹²⁴¹

Lieutenant General Dallager met with the Director of the Cadet Counseling Center and the Director of the Center for Character Development on July 3, 2002 to discuss an issue related to sexual assaults.¹²⁴² At the end of the meeting, Lt Gen Dallager said he wanted to review the 2002 cadet Social Climate Survey data, especially the portion pertaining to sexual assaults, data the staff had not provided to command.¹²⁴³ The Victim Advocate Coordinator, the Chief of the Human Relations Division at the Center for Character Development, and the CASIE Program Manager joined the group at Lt Gen Dallager's office a short time later.¹²⁴⁴ They discussed the 2002 survey results, including the numbers reported in the sexual assault portion of the survey. Eighty cadets (out of 1,948 who responded) said they had been sexually assaulted while they were cadets at the Academy and a substantial majority said they never reported the incident.¹²⁴⁵ The validity of the data was subsequently questioned.¹²⁴⁶ Lieutenant General Dallager said he wanted more information, specifically trend data and the results of the surveys from prior years, to get a better understanding of the magnitude of the problem.¹²⁴⁷

¹²³⁵ Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 2-3; Statement of Victim Advocate Coordinator, Exhibit 50, at 31, 62; Statement of Director, Cadet Counseling Center, Exhibit 47, at 10-11.

¹²³⁶ See Briefing Slides, Sexual Assault Services, slide 4, Exhibit 85. Note: This was only one source of sexual assault reports as cadet survey data was also available. See this Report, Section III.I., Social Climate Surveys.

¹²³⁷ See Briefing Slides, Sexual Assault Services, slide 4, Exhibit 85.

¹²³⁸ Statement of Chief of Sexual Assault Services (2001 to 2002), Exhibit 83, at 3.

¹²³⁹ *Id.*

¹²⁴⁰ *Id.*

¹²⁴¹ Statement of Lt Gen Dallager, Exhibit 71, at 142.

¹²⁴² Statement of the Director, Cadet Counseling Center, Exhibit 47, at 11.

¹²⁴³ *Id.* at 11-12, 17, 20-23.

¹²⁴⁴ *Id.* at 11.

¹²⁴⁵ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, Attachment 3). Of the eighty cadets who said they had been assaulted, 87.5 percent said they did not report the incident. *Id.* Note: These overall numbers (eighty cadets) do not distinguish between Academy related assaults and other assaults.

¹²⁴⁶ Statement of the Director, Cadet Counseling Center, Exhibit 47, at 13-14.

¹²⁴⁷ *Id.* at 13, and Statement of Victim Advocate Coordinator, Exhibit 182, at 37.

In an effort to address Lt Gen Dallager's request for trend data, the Director of the Cadet Counseling Center¹²⁴⁸ reviewed the results of the sexual assault portions of the surveys conducted in 1998, 2000, 2001 and 2002, and discussed them with the Head of the Department of Behavioral Sciences and Leadership and her Deputy.¹²⁴⁹ This was the first in-depth examination of the 1998, 2000 and 2001 data. The examination caused the Director of the Cadet Counseling Center to question the validity of the survey data for several reasons, including the low rate of cadet participation in some years¹²⁵⁰ and some obvious inconsistent responses.¹²⁵¹ He discussed his concerns with the chairperson for the Department of Behavioral Sciences and Leadership and a former Director of the Cadet Counseling Center. Collectively they decided the results were not valid.¹²⁵² The Director of the Cadet Counseling Center said he did not provide trend data or data from the prior surveys to Lt Gen Dallager because he did not believe they were valid and because he did not believe Lt Gen Dallager specifically tasked him to provide such a response.¹²⁵³

Similarly, Brig Gen Gilbert did not recall seeing any data from the sexual assault portion of the Social Climate Surveys.¹²⁵⁴ We were unable to find any indication that sexual assault survey data collected in recent years was conveyed to the Commandant. Likewise, the July 3, 2002 meeting in the Superintendent's office that included a discussion about the 2002 sexual assault survey results was the only instance we found where the Superintendent received any sexual assault survey data.¹²⁵⁵

¹²⁴⁸ The Center for Character Development has overall responsibility for managing the cadet social climate survey, but they forward the data from the sexual assault portion to the Counseling Center once the results are compiled. It was understood that the Counseling Center "owned" the sexual assault survey data. Statement of Chief of Sexual Assault Services (1999 to 2001), Exhibit 82, at 1; and Statement of the Director, Center for Character Development (1996 to 2002), Exhibit 72, at 25 (the Cadet Counseling Center was part of the Center for Character Development until 1996 when it was realigned under the Department of Behavioral Sciences and Leadership. Responsibility for the sexual assault component of the cadet social climate survey transferred from the Center for Character Development when the Counseling Center was realigned.).

¹²⁴⁹ Statement of the Director, Cadet Counseling Center, Exhibit 47, at 18, 20.

¹²⁵⁰ For example, only 314 of the more than 4,000 cadets participated in the 2000 survey. Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 1999-2000, cover memorandum).

¹²⁵¹ Statement of Director, Cadet Counseling Center, Exhibit 47, at 16. As an example of clearly inconsistent responses, the Director said a number of the male cadets that said they were victims of sexual assault indicated the manner in which they were assaulted was vaginal penetration. *Id.*

¹²⁵² *Id.* at 20. *But see*, this Report, Section III.I., Social Climate Surveys, noting the data was not invalid although problematic.

¹²⁵³ Statement of Director, Cadet Counseling Center, Exhibit 47, at 17-21. However, earlier he said, "Well, the tasker was given to the counseling center, so it would have been me as far as responsibility." *Id.* at 18. The Director of the Counseling Center said he did not believe anyone in the Academy's senior leadership was ever briefed on sexual assault survey data prior to July 3, 2002. *Id.* at 23. The Working Group's review tends to confirm his belief. The only indication that senior leadership was briefed on sexual assault survey data was a December 1998 briefing to the senior staff, including Lt Gen Oelstrom (or possibly his executive officer on his behalf) and (then) Brig Gen Lorenz, by the Chief of Sexual Assault Services. Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2. This suggests the Commandants (Brig Gen Welsh throughout his tenure (1999 to 2001) and Brig Gen Gilbert from August 2001 until the current issues arose in early 2003) were not aware of any sexual assault survey data. Likewise, Lt Gen Oelstrom did not receive sexual assault survey data in the final eighteen months of his tenure and Lt Gen Dallager did not receive any in the first twenty-five months of his tenure. It is unlikely Lt Gen Dallager would have received sexual assault survey data then had he not specifically requested it at the July 3, 2002 meeting. According to the Director of the Counseling Center, the sexual assault survey data was not used for anything and he did not know what the rationale was for collecting the information. Statement of Director, Cadet Counseling Center, Exhibit 33, at 14.

¹²⁵⁴ Statement of Brig Gen Gilbert, Exhibit 10, at 44-45.

¹²⁵⁵ The results of the 1997 sexual assault survey were briefed in a December 1998 meeting, but the participants were uncertain whether Lt Gen Oelstrom was present. Statement of Chief of Sexual Assault Services (1997 to 1999), Exhibit 68, at 2, and statement of Vice Commandant (1998 to 1999), Exhibit 51, at 23. The Victim Advocate Coordinator,

Lieutenant General Dallager developed concerns in the summer of 2002 that the climate at the Academy “was not as good as it should be” based upon information he received, anecdotal observations and conversations with cadets.¹²⁵⁶ As a result, he briefed all of the cadets and permanent party members that summer and stressed to them that character development was priority one, and he highlighted his concern about unprofessional conduct.¹²⁵⁷ His concern over the extent of sexual assault was heightened around that time and he became frustrated with his inability to get substantive answers to his questions.¹²⁵⁸ Although he thought that the Academy had a pretty good sexual assault program, in interviews he identified areas requiring attention. He observed that he did not receive regular reports from the Sexual Assault Services Committee, that not enough information came to command on individual cases, and investigative processes were not well connected. He could only recall receiving report forms on individual sexual assault incidents on two occasions in three years.¹²⁵⁹ He said the Sexual Assault Services Committee had “not worked the issues I think it’s intended to work.”¹²⁶⁰ He turned to the Center for Character Development to address sexual harassment and the Cadet Counseling Center to address sexual assault, but when he inquired of each group to determine if matters were better or worse, he got no definitive reply.¹²⁶¹

According to Lt Gen Dallager, the Center for Character Development told him that the sexual harassment portion of the cadet climate survey they considered “not to be overly valid.”¹²⁶² Lieutenant General Dallager thus directed “the experts” to develop a valid survey instrument.¹²⁶³

As noted in the Social Climate Survey section of this Report, while considered of questionable validity by some at the Academy, the survey results showed, of the cadets who responded, a significant number said they had been sexually assaulted since coming to the Academy.¹²⁶⁴ There were 167 affirmative responses in the 2001 survey,¹²⁶⁵ and eighty affirmative responses in the 2002 survey.¹²⁶⁶ Lieutenant General Dallager and Brig Gen Gilbert said they did not recall that data being presented to them, but both agreed the numbers were significant and would have been cause for concern had they known the results.¹²⁶⁷

The Cadet Counseling Center, at the direction of Lt Gen Dallager, conducted a survey in January 2003 to measure cadets’ perceptions on the services available for sexual assault victims at

however, recalled Lt Gen Oelstrom being present at the briefing and said it was her only clear recollection of Lt Gen Oelstrom. Statement of Victim Advocate Coordinator, Exhibit 182, at 21-22. This was the only other reference to sexual assault survey data being presented to a Superintendent.

¹²⁵⁶ Statement of Lt Gen Dallager, Exhibit 71, at 16.

¹²⁵⁷ *Id.* 47.

¹²⁵⁸ *Id.* at 48.

¹²⁵⁹ *Id.* at 28-29, 49, 63, 75.

¹²⁶⁰ *Id.* at 49.

¹²⁶¹ *Id.* at 50.

¹²⁶² *Id.* at 34. That observation was first raised in the Fall of 2002.

¹²⁶³ *Id.* at 39-40. The group formed in the Fall of 2002. The next meeting is scheduled for May 2003.

¹²⁶⁴ The wording of the questions changed over time and was such that not all of the reported assaults are necessarily Academy-related sexual assaults. For further discussion, *see* this Report, Section III.I., Social Climate Surveys.

¹²⁶⁵ Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, Attachment 4).

¹²⁶⁶ *Id.*

¹²⁶⁷ Statement of Lt Gen Dallager, Exhibit 71, at 45-46 and Statement of Brig Gen Gilbert, Exhibit 10, at 45-46. As discussed earlier, Lt Gen Dallager was briefed on the 2002 results during the meeting in his office on July 3, 2002, but was not briefed on the 2001 results.

the Academy.¹²⁶⁸ While some of the data was encouraging, with ninety-five percent saying they knew about the services available through CASIE, other data was discouraging. About one-third of the female cadet respondents expressed a lack of confidence in the Academy's sexual assault treatment program. The lack of confidence was highest among female first-degree cadets with fifty-nine percent expressing a negative sentiment. Also, less than half of female cadet respondents said the Academy provides a supportive climate for sexual assault victims.¹²⁶⁹ The survey did not attempt to determine the extent of the problem with relevant questions about whether respondents had been sexually assaulted. During the same period, to try and get a better understanding of the environment, Lt Gen Dallager arranged informal lunches in his office for cadet representatives from each of the four classes to assess their perspectives on the Academy's climate.¹²⁷⁰ These informal meetings tended to confirm his concerns regarding the social climate.¹²⁷¹

Brigadier General Wagie was the only member of the Academy's senior leadership who was aware of the sexual assault survey data and the number of cases reported to the Cadet Counseling Center, and had a unique perspective to appreciate the significance of the data.¹²⁷² He began his current assignment at the Academy in 1987.¹²⁷³ He was there when Lt Gen Hosmer met with the female cadets and shortly thereafter Lt Gen Hosmer tasked him to develop the Center for Character Development.¹²⁷⁴ He was the first Director of the Center for Character Development and served in that capacity from June 1994 to July 1996.¹²⁷⁵ He attended the meeting Lt Gen Stein held with the Surgeon General, the Inspector General, and the Judge Advocate General in February 1997.¹²⁷⁶ After serving as the Vice Dean of the Faculty from July 1996 to June 1998, he became the Dean of the Faculty and he has served in that capacity for nearly five years.¹²⁷⁷ As the Dean, he oversees the Cadet Counseling Center and receives frequent updates from the Director on the number of cadets reporting sexual assaults to the Cadet Counseling Center.¹²⁷⁸ Brigadier General Wagie is the chairperson of the Character Development Commission and attends the monthly meetings.¹²⁷⁹ He said the commission is briefed on the Social Climate Surveys, although he did not recall the sexual

¹²⁶⁸ Results of Sexual Assault Reporting and Treatment Survey, January 2003, Exhibit 210. Of nearly 4,000 cadets, 2,893 completed the survey. *Id.*

¹²⁶⁹ *Id.*

¹²⁷⁰ Statement of Lt Gen Dallager, Exhibit 71, at 46 and 78, and Statement of the Vice Superintendent, Exhibit 293, at 12 and 29. The lunches were held in January 2003. *Id.* at 12.

¹²⁷¹ Lieutenant General Dallager said at the lunches and other informal meetings he found there was a high degree of sexual harassment, which he described as "much higher than any Air Force organization I've been in." Statement of Lt Gen Dallager, Exhibit 71, at 46.

¹²⁷² Brigadier General Wagie said he has served under four Superintendents and with six Commandants. Statement of Brig Gen Wagie, Exhibit 198, at 49. He was involved in implementing some of the recommendations made in the reports prepared by the General Accounting Office in the period between 1993-1995, and he was a member of the Character Development Review Panel led by Lt Gen Hosmer in 2000 and 2002. Statement of Brig Gen Wagie, Exhibit 209, at 24-25.

¹²⁷³ Biography of Brig Gen Wagie, Exhibit 294.

¹²⁷⁴ Statement of Brig Gen Wagie, Exhibit 198, at 44-45.

¹²⁷⁵ Biography of Brig Gen Wagie, Exhibit 294.

¹²⁷⁶ Briefing to SAF/IG, SAF/SG and AF/JA, February 14, 1997, Exhibit 295. The notes accompanying the briefing slides indicate the Superintendent established a Social Climate Process Action Team in February 1995 to address the social climate in general and sexual assault specifically, and then Col Wagie chaired the team. *Id.* at slide 14. The briefing included sexual assault survey data for Academic Years 1995-1996 and 1996-1997. *Id.* at slides 23-26. The team met every ten days to two weeks and provided frequent updates to Lt Gen Stein. E-mail from Director of Curriculum, Squadron Officer College (former Director of Cadet Counseling Center), Exhibit 61.

¹²⁷⁷ Biography of Brig Gen Wagie, Exhibit 294.

¹²⁷⁸ Statements of Brig Gen Wagie, Exhibit 198, at 94-95, and Exhibit 209, at 18-19.

¹²⁷⁹ Statement of Brig Gen Wagie, Exhibit 209, at 5.

assault portion being briefed in 2002.¹²⁸⁰ He did remember discussing the numbers from the 2002 sexual assault survey with the staff at the Cadet Counseling Center.¹²⁸¹ He said when he would see the numbers from the sexual assault survey he would compare them with the information from the Cadet Counseling Center on the number of sexual assaults reported to them. He indicated the survey's definition of sexual assault was broad and could include an unwanted pat on the back, so he believed the Cadet Counseling Center numbers were a more accurate reflection of what he viewed as criminal sexual assaults.¹²⁸² Brigadier General Wagie recalled Lt Gen Dallager asking the senior staff how widespread sexual assaults were, usually during a discussion about a specific incident, and talking about general impressions, but there is no indication that Brig Gen Wagie ever provided him the specific numbers from the sexual assault surveys.¹²⁸³

With the Superintendent and the Commandant aware of little information from the sexual assault program, the Sexual Assault Services Committee meeting less frequently, survey data related to sexual assaults not being elevated to senior leadership, the senior staff not interacting well, and events like the September 11th terrorist attacks diverting attention elsewhere, the Academy's leadership may not have been attuned to the aggregate effect of other indicators relevant to sexual assaults, specifically beginning in the second half of 2001 and continuing through the Fall of 2002, an increased number of sexual assaults were reported.¹²⁸⁴ The Working Group found ten allegations (including six cadet-on-cadet cases) that were reported to AFOSI between July 1, 2001 and December 31, 2002 (a year and a half period) compared with five allegations (including four cadet-on-cadet cases) in the preceding eighteen-months.¹²⁸⁵ The Cadet Counseling Center initiated forty-three sexual assault tracking sheets (many incidents were not recent and/or did not implicate cadets as suspects) based upon incidents reported to them between July 1, 2001 and December 31, 2002. We are unable to determine from the tracking sheets what information about these incidents was conveyed to the Commandant or the Superintendent.¹²⁸⁶

¹²⁸⁰ *Id.* at 4-5, 9-14, 18.

¹²⁸¹ *Id.* at 21. Eighty cadets answered that they had been sexually assaulted in the 2002 survey. Academy Climate Survey Data, AY 1993-2002, Exhibit 53 (AY 2001-2002, at Attachment 4).

¹²⁸² *Id.* at 18-20.

¹²⁸³ *Id.* at 22-23

¹²⁸⁴ AFOSI Reports of Investigation, Exhibit 389, Exhibit 414, Exhibit 337, Exhibit 191, Exhibit 324; AFOSI Reports (Summarized), Exhibit 326, Exhibit 297, Exhibit 298, Exhibit 299.

¹²⁸⁵ AFOSI Reports of Investigation, Exhibit 389, Exhibit 414, Exhibit 337, Exhibit 191, Exhibit 324; AFOSI Reports (Summarized), Exhibit 326, Exhibit 297, Exhibit 298, Exhibit 299. For the January 1, 2000 to June 30, 2001 period, *see* Exhibit 328, Exhibit 163, Exhibit 320, Exhibit 327. Brigadier General Gilbert was not the Commandant when one of the cases (a cadet-on-cadet case) was reported. Statement of Brig Gen Wagie, Exhibit 198, at 113. Brigadier General Wagie, who served as the Director of the Center for Character Development at the request of Lt Gen Hosmer in 1994 shortly after it opened, said the emphasis on sexual assault awareness and treatment dimmed when major incidents occurred. He noted, "ten years ago we took sexual assault very seriously." *Id.* at 44. His assessment of what happened over those ten years to take the focus off of sexual assaults was, "I think we have probably been distracted by other events...." *Id.* at 113.

¹²⁸⁶ Sexual Assault Services Tracking Sheets, Exhibit 301. Seven of the reports were for alleged incidents that had occurred years earlier and were unrelated to the Academy. Three were anonymous reports that surfaced through written materials or from a third party. One case was reported by a civilian victim who, at the time the tracking sheet was prepared, was not sure she wanted to file a formal report. One case involved an alleged civilian subject. Three of the tracking sheets indicated the Counseling Center had notified AFOSI. *Id.* Tracking sheets were not available for the preceding eighteen-month period. The tracking sheets included two that Lt Gen Dallager initialed, one that Brig Gen Gilbert initialed and another containing a side note from him to the Vice Commandant with his initials.¹²⁸⁶ Twenty-two sheets were initialed by the Vice Commandant and annotated to reflect that the Commandant and the Superintendent were briefed on the incidents. *Id.* Seven of these twenty-two sheets indicated that Brig Gen Gilbert was the person who briefed the Superintendent. *Id.* We are unable to determine from the tracking sheets what information was conveyed to the Commandant or the Superintendent.

E. Composition of the Academy Leadership, Faculty and Staff¹²⁸⁷

While not directly connected to sexual assaults or responding to such incidents, the Working Group found that the demographics of the Academy's military personnel are not reflective of Air Force officer demographics in some respects.¹²⁸⁸ This has the potential to insulate the Academy from a broader range of experiences and perspectives a more diverse force would offer. A review required by the *Agenda for Change* should address this.

The percentage of officers currently assigned to the Academy who were commissioned through the Academy is more than two and a half times the representation of Academy graduates among all Air Force officers and more than double the percentage for line officers. Fewer than one-fifth of all Air Force officers and less than one-fourth of line officers received their commissions through the Academy, yet almost half of the Academy's permanent party faculty and staff is made up of Academy graduates.¹²⁸⁹ This imbalance is most notable among the senior leadership where the Superintendent, the Commandant, the Dean of the Faculty, the Athletic Director, and the 10th Air Base Wing Commander are all Academy graduates.¹²⁹⁰ More than half of the members of the Academy Board are Academy graduates, and four of the five Board members that are not graduates have over twenty-years total time on station at the Academy.¹²⁹¹ Fifty-five percent of the forty-two colonels assigned to the Academy are graduates compared with less than twenty-two percent of colonels throughout the Air Force and less than twenty-eight percent of line colonels.¹²⁹²

Women constitute eighteen percent of all Air Force officers and just over thirteen percent of line officers. Women represent about fourteen percent of the officers assigned to the Academy.¹²⁹³ There are no women among the Academy's five senior leaders and no woman has ever served as the Superintendent or as the head of one of the Academy's primary elements.¹²⁹⁴ Of the forty-two colonels at the Academy, three are women, which is below the proportion of women serving in that rank throughout the Air Force.¹²⁹⁵

Historically, the average assignment length for an Air Force officer is about three years.¹²⁹⁶ Seventy-four officers at the Academy have four or more consecutive years time on station at the Academy, of these eighteen members have ten or more consecutive years time on station, of these

¹²⁸⁷ All figures are based upon January 2003 data provided by the Air Force Personnel Center. The data does not include officers assigned to the 10th Air Base Wing, the 10th Medical Group, and the Academy Preparatory School.

¹²⁸⁸ The information provided by the Air Force Personnel Center excluded officers in the legal, chaplain and medical career fields from their computations for "line officers." Officers in these three career fields account for twenty percent of all Air Force officers and about seven percent of the officers included in the data provided on the Academy's officer composition. Academy Officers Assigned, Exhibit 229; Current Active Air Force Officers, Exhibit 302.

¹²⁸⁹ About fifty percent of the Academy's faculty and staff are Academy graduates. The Athletic Department has the greatest percentage of Academy graduates at eighty-eight percent and the Headquarters USAFA staff has the lowest percentage at thirty-seven percent. Academy Officers (spreadsheet), Exhibit 229.

¹²⁹⁰ *Id.*

¹²⁹¹ Academy Board Composition (spreadsheet), Exhibit 303. The four Board members that are not Academy graduates but have more than twenty-years time on station average over twenty-four years at the Academy. The highest has over twenty-nine years total time at the Academy, including over twenty years in the current assignment. *Id.*

¹²⁹² Academy Colonels (spreadsheet), Exhibit 304.

¹²⁹³ *Id.*

¹²⁹⁴ Historical List of Academy Key Staff, Exhibit 355.

¹²⁹⁵ Academy Colonels (spreadsheet), Exhibit 304. Women account for seven percent of the Academy's colonels while more than eleven percent of all Air Force colonels, and 9.5% of line colonels, are women. *Id.*

¹²⁹⁶ Average Officer Tour Length (chart), AFPC/DPSAA, Exhibit 305.

seven members have fifteen or more consecutive years time on station, and of these one member has twenty-six consecutive years time on station.¹²⁹⁷ The forty-two colonels average over ten years total time at the Academy. Eighteen of them have over ten years total time on station; of these, twelve have over fifteen years; and of these, six have over twenty years, and three have over twenty-five years.¹²⁹⁸

F. Review of Sexual Assault Cases

Pursuant to the Secretary's guidance to evaluate the effectiveness of the Academy's sexual assault deterrence and response processes,¹²⁹⁹ we undertook an analysis of the investigated cases containing allegations of sexual assault at the Academy. The purpose of this analysis was to evaluate whether, in light of the available evidence, the criminal dispositions taken by the Academy leadership appeared to be reasonable. The review was performed by staff team members having military justice expertise.

In an effort to provide a general assessment of action on investigated allegations of sexual assault, we evaluated all cases containing investigated allegations of sexual assault that occurred between January 1, 1993 and December 31, 2002, and were reported to the Academy in that time frame. There were a total of fifty-seven such cases. (Fifty-two AFOSI cases plus five other cases where equivalent facts were developed by other means.)¹³⁰⁰

We are aware that in normal practice, command decisions on case dispositions are made in a fluid environment with changing and often competing dynamics, including such factors as the prosecutor's evaluation of witnesses. Assessing those command decisions based upon a review of reports of investigation may be instructive for process analysis, but cannot provide a definitive judgment on command's decisions. Further, the Air Force Inspector General is separately reviewing specific cases, and our general evaluation cannot be taken as a substitute for such detailed evaluation. Where we have identified concerns, they have been provided to the Inspector General for consideration.

¹²⁹⁷ Academy Officers (spreadsheet), Exhibit 228. There is a concern, however, that if military members are required to rotate after a single tour it could hurt the stability and cohesion of the academic programs. See E-mail, Accreditation Impact of High Faculty Turnover, April 24, 2003, Exhibit 306.

¹²⁹⁸ Academy Colonels (spreadsheet), Exhibit 304.

¹²⁹⁹ SECAF Guidance for the General Counsel and Working Group, Exhibit 3.

¹³⁰⁰ The five cases with facts developed by other means consisted of sexual assault allegations other than rape. One case involved information considered by a Military Review Committee convened to review a cadet's excess demerits. Cadet Record, Exhibit 307. The demerits were received for fraternization. *Id.* Information of the circumstances for the demerits raised an issue of sexual assault. *Id.* The second case was discovered in an Air Force Personnel Council file regarding the voluntary disenrollment of a cadet in lieu of involuntary disenrollment. Memorandum for Secretary of the Air Force General Counsel, August 5, 1996, and ancillary documents, Exhibit 308. The Memorandum signed by the Director, Air Force Review Board Agency notes the cadet received nonjudicial punishment for committing an indecent act by placing his hand on the knee of a female cadet and moving his hand down her leg. *Id.* The third case involved information obtained during a Board of Officer Inquiry of female cadet who allegedly told another female cadet that she was a homosexual. Report of Inquiry, First-Class cadet, Exhibit 309. During the inquiry the female cadet to whom the alleged statement was made divulged that the subject had touched her breasts and genital area without her consent. *Id.* The fourth case involved a Security Forces' investigation into the allegation that a civilian employee illegally gave Government property to a female cadet and on one occasion grabbed her buttock. Security Forces Report of Investigation, Exhibit 310. The fifth case involved allegations of rape and forcible sodomy that were disclosed during a female cadet's disenrollment proceedings. Cadet Disenrollment Package, Exhibit 406.

1. The Process.¹³⁰¹

Of the fifty-seven¹³⁰² cases examined, eight cases are still being investigated, with final action in those matters pending, and therefore not evaluated.¹³⁰³

Of the forty-nine remaining cases, we found that four of the cases involved victims who were cadets but the alleged assailants, who were military members, were neither stationed at, nor assigned to the Academy. Therefore, the Academy command did not have authority to determine the final disposition of the sexual assault allegations.¹³⁰⁴ In addition, another case involved a cadet accused of sexually assaulting a civilian in Denver, Colorado. The civilian authorities adjudicated this case.¹³⁰⁵ We did not assess these cases because their disposition fell outside the Academy's authority, leaving forty-four cases for review.

In one case, developed by means other than an AFOSI report of investigation, the only information available to the team was contained in an Air Force Personnel Council

¹³⁰¹ The portion of the staff team assessing the cases consisted of six members, three males and three females. All members of the team had experience as trial counsel (prosecutor) and/or defense counsel in courts-martial, and two of the members have served as Staff Judge Advocates. Cases were reviewed then briefed to the other members. The team then discussed how the case should be characterized. In making its characterization the team took into consideration the sufficiency of the evidence, as presented in the Reports of Investigation, and the availability/cooperation of the victim. The team members were in unanimous or near-unanimous agreement on the characterization of most cases. The team then compared its characterization of the matter with the actual action taken. Various references are made in the footnotes below to administrative discharges. The review did not consider the appropriateness of the characterization of discharge as there are too many potential variables and unknowns to be taken into account. When administratively discharging a cadet for misconduct there are three potential characterizations of discharge that may be awarded; they are: "Honorable;" "General (Under Honorable Conditions);" and, "Under Other than Honorable Conditions." As a general matter, increased due process, time and expense are required as the severity of characterization increases, ranging from notice and opportunity to respond, to use of a Hearing Officer, to use of a Board of Officers. A cadet faced with discharge may offer to resign instead, often conditioning his or her resignation on receiving a better characterization than may result from a hearing. Discharge with "Under Other than Honorable Conditions" has adverse consequences in civilian life which can be lifelong and can affect veterans benefits; this is also true of a "General (Under Honorable Conditions) discharge, but to a lesser degree.

¹³⁰² The fifty-seven AFOSI cases that are a part of the sixty-one total cases assessed in this section include three cases with multiple victims. The case found in AFOSI Report of Investigation, Exhibit 311, involved two female victims; the team assessed this as one case for purposes of this section, whereas it was treated as involving two victims in the statistics section. In addition, the case found in AFOSI Report of Investigation, Exhibit 312 involved two female victims; the team assessed this as one case for purposes of this section, whereas it was treated as involving two victims in the statistics section. Lastly, the case found in AFOSI Report of Investigation, Exhibit 393, involved three female victims; the team assessed this as one case for purposes of this section, whereas it was treated as involving three victims in the statistics section. (Note: There were a total of five named victims but only three appeared to have been the victim of conduct ordinarily considered criminal.) (For more statistical information, *see* this Report, Section III.H., Statistics on Sexual Assault.)

¹³⁰³ *See generally* AFOSI Item, Exhibit 313; AFOSI Report (summary), Exhibit 299; AFOSI Report (summary), Exhibit 314; Cadet Disenrollment, Exhibit 315; Cadet Record, Exhibit 307, Security Forces Investigation, Exhibit 310; and Office of Special Investigations Report (summary), Exhibit 298.

¹³⁰⁴ These cases were handled by the respective commands of the suspects. AFOSI Report of Investigation, Exhibit 316; AFOSI Report of Investigation, Exhibit 317; AFOSI Report of Investigation, Exhibit 318; and, AFOSI Report of Investigation, Exhibit 319.

¹³⁰⁵ This case involved a male cadet arrested by civilian authorities for assaulting two people and sexually assaulting a third person after becoming extremely intoxicated at a concert in Denver, Colorado, in July 2000. The sexual assault victim was an illegal alien and she was deported prior to the case coming to trial in December 2000. In accordance with the terms of a plea agreement entered into with the local district attorney, the cadet pled guilty to one count of criminal attempt and all other charges were dismissed. Complaint Initiation Information Form, Exhibit 320. He was sentenced to eighteen months probation, completion of an alcohol education course, and assessed court costs. *Id.*

memorandum.¹³⁰⁶ The memorandum referenced a nonjudicial punishment action for an indecent act (hand on leg), but no background information was available. Without additional information, the team was unable to assess the disposition of the matter, leaving forty-three cases for review.

To give an idea of the nature of the cases, our review indicated that twenty of the forty-three cases did not appear sufficiently strong to recommend criminal action (court-martial or UCMJ, nonjudicial punishment). Most of these involved facts with such significant issues regarding suspect identity, consent, or mistake of fact regarding consent that the chances of successful criminal action would not have justified the attempt. For similar reasons, seven others were problematic but may have justified initiating criminal action. Consequently, for a majority of the cases, the risk of initiating criminal action would have varied between unacceptable and significant.

Most case dispositions appeared within reasonable bounds of discretion; however, the Academy's disposition of some cases raised questions, described below.

2. The Detailed Analysis.

Of the forty-three cases considered, six were referred to and adjudged by courts-martial.¹³⁰⁷ The facts of each of the six cases warranted trial by court-martial.¹³⁰⁸ Five of the six cases resulted in conviction, and one acquittal.¹³⁰⁹

Each of the thirty-seven remaining cases were reviewed and assigned to one of four categories based upon the facts in the available information: (1) clearly not adequate evidence to support criminal charges; (2) some evidence, but not adequate to pursue criminal charges; (3) not strong evidence, but may be adequate to pursue criminal charges; and (4) cases where the evidence would support criminal charges.

3. The Assessment.

(a) Clearly not adequate evidence to support criminal charges.

After reviewing the facts and discussing the merits of the thirty-seven cases, we determined that eight of the cases were clearly not viable cases for criminal charges.

Of these eight cases, three involved investigations in which a suspect was never identified, making charges impossible.¹³¹⁰ In two other cases, before suspects were identified the victims

¹³⁰⁶ This matter was discovered in an Air Force Personnel Council Memorandum signed by the Director, Air Force Review Board Agency, in which a reference was made to nonjudicial punishment the cadet received for an indecent act. Memorandum for Secretary of the Air Force General Counsel, August 5, 1996, and ancillary documents, Exhibit 308.

¹³⁰⁷ The outcomes of the convictions were: (1) Dismissal from the service, confinement for eighteen months, and forfeiture of all pay and allowances, Courts-Martial for Sexual Misconduct, Exhibit 258; (2) Dismissal from the service, confinement for two months, and forfeiture of all pay and allowances, *Id.*; (3) Dismissal from the service and confinement for four years, *Id.*; (4) Dismissal from the service, confinement for seven months, and forfeiture of all pay and allowances, *Id.*; and (5) Dismissal from the service and confinement for six months, *Id.* A "Dismissal" is the Officer/Cadet equivalent of a Dishonorable Discharge for enlisted members.

¹³⁰⁸ AFOSI Report (summarized), Exhibit 297; AFOSI Report of Investigation, Exhibit 321; AFOSI Report of Investigation, Exhibit 322; AFOSI Report of Investigation, Exhibit 180; AFOSI Report of Investigation, Exhibit 394; and, AFOSI Report of Investigation, Exhibit 323.

¹³⁰⁹ One court-martial resulted in an acquittal. Courts-Martial for Sexual Misconduct, Exhibit 258.

decided not to cooperate with the investigators.¹³¹¹ Two other cases involved investigations in which suspects were never identified and the complainants recanted their allegations of rape.¹³¹² In the eighth case, although a suspect was initially identified, the report indicated the complainant subsequently recanted her allegations.¹³¹³

(b) Some evidence but not adequate to pursue criminal charges.

Of the remaining twenty-nine cases for review, we found that twelve cases involved some evidence of sexual assault, but the evidence appeared too problematic to make pursuit of criminal charges a viable choice. Each of the reports of investigation were reviewed and the facts discussed, and it was concluded that the disposition of each of the twelve cases regarding criminal charges appeared to be within reasonable discretion.¹³¹⁴

¹³¹⁰ AFOSI Report of Investigation, Exhibit 324; AFOSI Report of Investigation, Exhibit 325; and AFOSI Report of Investigation, Exhibit 395. All three incidents occurred on Academy property. *Id.* The reports indicate the AFOSI made reasonable investigative efforts in each case. *Id.*

¹³¹¹ AFOSI Report (summarized), Exhibit 326. The female civilian victim refused to cooperate with the AFOSI. In AFOSI Report of Investigation, Exhibit 396 the cadet victim was unable to identify her assailant. She subsequently left the local area and declined to cooperate further in the investigation.

¹³¹² AFOSI Report of Investigation, Exhibit 327 and AFOSI Report of Investigation, Exhibit 328.

¹³¹³ The female cadet victim and male cadet subjects were friends and had previously engaged in consensual sexual intercourse and the victim had given the subject reason to believe that she would welcome the act of being awakened by sexual intercourse. The alleged victim and subject were studying in the subject's dorm room and the victim fell asleep. The subject placed the sleeping victim in his bed and he went to sleep laying beside her. When the victim awoke the subject was having sexual intercourse with her. The victim had been raped by a boyfriend before entering the Academy. She told investigators that while the subject was having sexual intercourse with her she had a flashback and saw the face of the boyfriend who had raped her. She said the subject's actions were not rape. AFOSI Report of Investigation, Exhibit 329.

¹³¹⁴ See AFOSI Report of Investigation, Exhibit 191. This case involved a female cadet victim and subject engaged in sexual acts at least twice, once in her dormitory room and once in his room and perhaps other times thereafter. The victim's actions and words did not clearly convey a lack of consent and she stated that she did not consider what subject did to constitute rape. No action was taken in this case, but subject was found guilty of sodomy in a general court-martial in another case. Courts-Martial for Sexual Misconduct, Exhibit 258. The second case, AFOSI Report of Investigation, Exhibit 163, involved a female cadet victim who claimed subject made veiled threats to report her for cadet infractions which caused her to acquiesce to several sexual encounters over several months. The victim made statements to other cadets that did not indicate rape. The subject, who passed an AFOSI polygraph test, was disenrolled for fraternization. In the subsequent discharge action the subject's service was characterized as Honorable. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 407. The third case, AFOSI Report of Investigation, Exhibit 330, involved a case of female cadet victim who was extremely intoxicated when she awoke and saw the subject standing in her room. She stated she did not recall anything further. When she awoke the next morning and she had some vaginal bleeding and soreness, but had no recollection of any sexual contact. Neither the medical examination nor the forensic examination of the victim's bedding disclosed any conclusive information. The subject voluntarily resigned from the Academy for personal reasons. The fourth case, AFOSI Report of Investigation, Exhibit 331, dealt with the case of a female civilian victim and a male cadet subject who were dating and had previously engaged in consensual sex. The victim claimed subject slightly pushed her head down towards his penis and she performed fellatio on him for a brief period. Victim did not object to fellatio. No action was taken in this matter. The fifth case, AFOSI Report of Investigation, Exhibit 332, is a case in which the female cadet victim, male cadet subject, and another cadet consumed a large amount of alcohol. They shared a hotel room. Subject admitted kissing and fondling the victim, but said it was consensual. The third cadet observed the sexual contact and said it appeared to be consensual. The victim alleged that the subject penetrated her with his penis. Subject denied penetration with his penis, but stated that he may have accidentally penetrated the victim with his thumb while they were engaged in fondling. The victim indicated that she did not believe she ever said no or attempted to resist the subject. Subject graduated late. The sixth case, AFOSI Report of Investigation, Exhibit 333, involved a female cadet victim and male cadet subject, who participated in a drinking game, which resulted in both being intoxicated. Victim and subject went to sleep in the victim's bed. In bed the two began kissing and the subject put his fingers in the victim's vagina. The victim did not object to the subject's action. At the subject's request the victim removed her shirt. The subject straddled the victim and rubbed his penis

against the victim's clothed crotch. The subject removed the victim's shorts, then asked if she wanted him inside her to which she said nothing, and did not object. The subject began having intercourse with the victim until she asked him to stop because he was hurting her. The subject withdrew his penis and laid beside the victim, kissing her. Then the subject began having intercourse with the victim again, asking her if she was enjoying the act. The victim did not respond and did not object to intercourse. The subject subsequently withdrew his penis and ejaculated. The victim fell asleep. Later, the victim awoke and discovered that the subject atop of her with his penis thrusting inside of her vagina. She said nothing but began to scratch the subject's back. At the subject's request she stopped scratching his back. The subject turned the victim over onto her stomach and she said he was raping her from behind. After intercourse, the subject told the victim he needed to go to the bathroom. The victim walked the subject to the bathroom and then back to her room to spend the night. When they returned from the bathroom, the subject asked the victim if she wanted him to sleep in her roommate's bed, which was empty; the victim told the subject she didn't care. *Id.* When the subject was interviewed he stated that he believed that all acts were consensual. The subject received cadet discipline for violating cadet regulations and graduated. The seventh case, AFOSI Report of Investigation, Exhibit 345, is the case of a female civilian victim who claimed she was forced to have sex with cadet subject and a male civilian while all were attending a house-party. Both the subject and the male civilian denied the allegation. One witness stated that the victim told him prior to the alleged rape that she intended to have sex with the subject. Other witnesses stated that the victim was upset when the subject left the victim's bedroom during the alleged rape to speak to another female. *Id.* No action was taken against the subject. The eighth case, AFOSI Report (summary), Exhibit 334, involved a case of a male cadet victim who claimed subject (a male cadet) masturbated him and performed fellatio on him. The subject claimed he and victim engaged in mutual, consensual sex. With regard to the issue of consent the subject passed a polygraph and the victim failed a polygraph. The subject received nonjudicial punishment for sodomy and voluntarily resigned from the Academy in lieu of an involuntary discharge. The subject received a General (Under Honorable Conditions) discharge. *See* DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 408. The ninth case, AFOSI Report of Investigation, Exhibit 335, involved a claim by a female cadet victim that a male cadet subject raped her while on a camping trip with other cadets. The victim did not report the incident but told another cadet approximately four months later and that cadet notified the commander. Subject admitted kissing and fondling the victim, but denied having intercourse. *Id.* The victim was not eager to pursue prosecution. Memorandum for Record of Discussions with Prior Staff Judge Advocates, Exhibit 336. Subject passed an AFOSI polygraph. AFOSI Report of Investigation, Exhibit 335. No action was taken against the subject. In the tenth case, AFOSI Report of Investigation, Exhibit 397, a female cadet victim was attacked by an unknown assailant (although it was believed that he was a cadet because the victim believed she felt his Academy ring) while walking to her dorm room. During the course of the attack the victim was able to strike the subject on the side of his face. An analysis of a cadet pool of over eighty possible assailants produced the subject as the possible assailant (he had a bruise on the side of his face at the time) however sufficient evidence was never recovered to establish the subject as the assailant. No action was taken against the subject in the matter although the subject subsequently received nonjudicial punishment for an unrelated sexual assault and was involuntarily disenrolled from the Academy and received a General (Under Honorable Conditions) discharge characterization. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 409. The eleventh case, AFOSI Report of Investigation, Exhibit 399, involved a female cadet victim who had been playing cards and drinking with other cadets earlier in the evening. When she returned to her room there was a note from the subject, to whom the victim had issued an open invitation to visit her, that he had stopped by but she wasn't there but he would stop by again later. Subject, who was intoxicated, returned to the victim's room and talked to her. They talked briefly before the victim fell asleep. *Id.* The victim stated that she awoke, naked from the waist down, with the subject on top of her, and although she was scared she passed out. She stated she awoke later to find the subject performing cunnilingus on her. Subject stated that he and the victim kissed and the victim pulled him up to her bed and pulled up her shirt. Subject stated that victim carried on a coherent conversation and helped him take off the boxer shorts she was wearing. The subject stated that the victim was awake when he began performing cunnilingus on her but she stopped moving, and after a few minutes he realized that she was asleep. He then stopped, lay next to her and went to sleep. He awoke and left the next morning before she awoke. The victim's roommate, a self-proclaimed sound sleeper, was in the room the entire time but did not hear anything. The victim did not report the incident until three months later after the subject graduated. The subject received a letter of reprimand. *Id.* The twelfth case, AFOSI Report of Investigation, Exhibit 398, involved a female cadet victim who went to subject's room where they kissed. Subject placed victim's hand on his penis and unbuttoned the victim's blouse and shorts. The subject rubbed his penis on victim's vagina and penetrated slightly. During the encounter, victim never expressed any lack of consent. The subject resigned in lieu of a conduct board for violating cadet regulations. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8.

(c) Not strong evidence, but may be adequate to pursue criminal charges.

Of the remaining seventeen cases, we considered eight not to have strong evidence, but which may have been adequate to support initiation of criminal charges. In two of the eight cases, command initiated criminal charges and the disposition appeared within reasonable discretion.¹³¹⁵ In two other cases, we acknowledged that the command's decision not to pursue criminal charges also appeared within reasonable discretion.¹³¹⁶ In two of these cases, evidence exists that raises the issue of whether the suspect could have mistaken the actions of the victim and reasonably believed the victim was a consensual partner.¹³¹⁷ The remaining two cases involved significant

¹³¹⁵ AFOSI Report of Investigation, Form 1168, Statement of Suspect/Witness/Complainant, Exhibit 202, involved the subject fondling a female cadet victim in her dorm room. The subject received nonjudicial punishment and was involuntarily disenrolled from the Academy. He was subsequently discharged from the service with an Under Other Than Honorable conditions service characterization. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 410. The second case, AFOSI Report of Investigation, Exhibit 347, involved a male cadet subject and a female cadet victim who were among fifteen cadets on a ski trip. The victim was intoxicated and fell asleep. The victim felt someone insert a finger into her vagina, but could not identify who the individual was. The subject was observed sleeping next to the victim in a room shared with others. Although court-martial charges were initiated, the Article 32 investigating officer recommended not proceeding to trial. The subject graduated and was commissioned as an officer. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8.

¹³¹⁶ A female cadet victim alleged the subject raped her after she accepted a ride on base. The victim did not report the incident for more than three months. In the interim period, she told other people she was raped, but the story was different from what she told the AFOSI. AFOSI Report of Investigation, Exhibit 338. Specifically, the victim told the AFOSI that the subject alone raped her. However, in other accounts she provided there were marked inconsistencies in the number of assailants, whether the assault occurred inside or outside the car, and their actions during the assault. *Id.* The second case involved the touching of a female cadet's breasts and genital area by another female cadet. Board of Proceedings and Legal Review, Exhibit 309. The incident involved the two cadets sharing a bed with another cadet while spending the night at their coach's house. *Id.* The third cadet was asleep during the incident. *Id.* A discharge board convened to determine whether subject should be discharged for homosexuality. *Id.* The discharge board recommended the suspect be discharged with a General (Under Honorable Conditions) discharge. *Id.* The subject was retained by Secretary of the Air Force decision. Memorandum, Re: Cadet Discharge, Action of the Secretary of the Air Force, December 13, 1996, Exhibit 376

¹³¹⁷ One of the cases involved a female civilian victim who went back to the subject's dormitory room after a football game. The victim agreed to remove her clothing down to her underwear and get into bed with the subject. Subject asked the victim to remove his underwear, which she did. The victim's underwear was later removed, but she did not recall how. When the suspect attempted to insert his penis into her vagina the victim said "no," and he stopped. Subject and victim remained in bed and talked and cuddled. Subject then performed cunnilingus on the victim and inserted his fingers into her vagina. The victim stated she did not protest. The victim agreed to simulated intercourse, "dry sex," with the suspect during which his penis penetrated the victim's vagina. The victim said he ignored her saying "no" repeatedly. Subject received cadet discipline and graduated with his class. AFOSI Report of Investigation, Exhibit 340. Another case involved a female cadet victim who was in the subject's dormitory room where they watched a movie. The victim stated the subject started rubbing her shoulders, then began to touch her breasts, and tried to remove her clothing. The victim stated she said "no" several times, but subject proceeded and she assumed a "submissive role." AFOSI Report of Investigation, Witness Statement, Exhibit 342, at 40. The subject stated that while watching the movie he and victim began French-kissing. The subject stated that he locked the door and returned to the victim and the continued to kiss, he also touched her breasts and the victim's hands were inside his shirt. The subject stated he took off his shirt and the victim removed her sweater. The victim stated that the subject then removed her clothing, forced her head down towards his penis, and placed her head so she could perform fellatio on him. The subject stated that he tried to slip the victim's jeans off but was unsuccessful so the victim removed her jeans herself. Subject stated that while he was fondling the victim's breasts, she pulled his shorts and underwear down and performed fellatio. Subject later applied a condom from a package the victim opened and engaged in sexual intercourse with the victim. Subject received administrative punishment by means of the Cadet Disciplinary System and graduated from the Academy. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8.

issues of fact that would be detrimental to victim credibility.¹³¹⁸ We were unable to reach a collective opinion on the reasonableness of the dispositions of the latter four cases based upon the information available.

(d) Evidence supports criminal charges.

Of the remaining nine cases, it was determined that the nine cases were viable for criminal charges (court-martial or non-judicial punishment under the Uniform Code of Military Justice). Command actions appeared to be within reasonable discretion in eight of the nine cases.¹³¹⁹

¹³¹⁸ In one case, AFOSI Report of Investigation, Exhibit 400, approximately two months had elapsed before the incident was reported. The victim, a civilian female, stated she went to the subject's dormitory room while waiting for a friend to dress for dinner. The victim stated that while there subject pulled her by her shirt to the floor. Subject climbed on her and put his hand inside her shirt on the outside of her bra. He unzipped the victim's pants, placed his hand inside her underwear, and inserted his finger into her vagina. He took the victim's hand and placed it on his penis inside his shorts. The victim stated the subject's alarm clock went off and the subject got up to turn off the clock. The victim remained on the floor. The victim stated the subject returned to where the victim was and asked if she was sure she did not want to have sex. She stated she told the subject that she did want to have sex and the subject let her leave the room. Subject acknowledged that he and the victim engaged in consensual sexual acts, but the acts took place on his bed. *Id.* Subject received cadet discipline. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The other case, AFOSI Report of Investigation, Exhibit 311, involved a party with a group of cadets. The victim stated that during the party, subject pulled the victim into a bedroom, removed her clothing, and forced her to engage in intercourse. The victim said subject ignored her demands to stop and continued to rape her until some of the other cadets knocked on the bedroom door. Subject claimed the sexual activity was consensual. Other witnesses observed the victim either completely or partially nude in a hot tub with two males, one of which was the subject, a few hours after the alleged rape. At a different time the same subject was alleged to have sexually assaulted another female cadet victim at his parent's house. The victim said she was intoxicated and went to bed. She awoke to find the subject in bed with her and he forced her to perform fellatio on him. Subject claimed the sexual activity was consensual. Subject passed a polygraph with respect to both incidents. Memorandum for AFOSI, Re: PDD Examination, Exhibit 339. Subject resigned in lieu of involuntary separation proceedings for fraternization and received an Honorable service characterization. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 407.

¹³¹⁹ In the first case, the victim, a fifteen-year-old civilian female was an acquaintance of the subject. The victim and subject had previously engaged in sexual activity. Victim, after consuming some alcohol consented to sexual intercourse with the subject. The act did not constitute statutory rape under Colorado state criminal law. AFOSI Report of Investigation, Exhibit 337. The subject voluntarily resigned in lieu of an administrative separation conditioned on receipt of General (Under Honorable Conditions) discharge. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 411. The command accepted the conditional discharge offer because the parents of the victim indicated they would refuse to allow their daughter to cooperate. Memorandum for Record of Discussions with Prior Staff Judge Advocates, Exhibit 336. In the second case, AFOSI Report of Investigation, Exhibit 341, the victim, a female civilian, met the subject at a party. Victim and subject went to a bedroom where victim performed fellatio on the subject. Subject digitally penetrated victim with several of his fingers and performed cunnilingus on victim. Victim stated that subject began to penetrate her vagina with his penis and she told him to stop. Victim stated subject continued to insert his penis in her vagina but lost his erection. *Id.* Subject stated that he did digitally penetrate the victim but as he attempted to have intercourse with the victim she stated "no" at which time he stopped. *Id.* Subject resigned in lieu of court-martial. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The disposition of the matter was made at the Secretary of the Air Force level and the characterization of service was General (under Honorable Conditions). Memorandum, Resignation in Lieu of Court-Martial, Exhibit 388. In the third case, AFOSI Report of Investigation, Exhibit 312, the subject allegedly sexually assaulted two female cadets on separate occasions. One of the victims was forced by the subject to place her hand on the subject's penis. She removed her hand at which time the subject again placed the victim's hand on his penis. When she removed her hand again the subject left her room. *Id.* The subject, in an intoxicated state (on a separate day), entered a different victim's room and asked the victim to help him to his room. When the subject and victim arrived at the subject's room, he grabbed the victim and aggressively kissed her. The subject removed his shorts and exposed his penis, and tried to push her to her knees; the victim told the subject not to push her and he stopped. After the victim refused the subject put her on the floor and lay on top of her. When the subject moved as though to perform oral sex, she said no and that she would yell if he didn't stop. He let her up and the victim left the room. *Id.* The subject received nonjudicial punishment and was

In the ninth case, command took no criminal action. Although the subject resigned in lieu of involuntary separation proceedings, we did not agree with the absence of criminal charges, based on the available information.¹³²⁰

disenrolled from the Academy. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The subject was subsequently discharged. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 409. The Academy recommended that the subject's discharge be characterized as Under Other Than Honorable Conditions. Memorandum with Recommendation for Characterization of Discharge, Exhibit 412. The Personnel Council recommended a discharge characterization of General (Under Honorable Conditions) with recoupment of his educational costs, which was approved. *Id.* and DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 409. The fourth case, AFOSI Report of Investigation, Exhibit 343, involved a civilian female minor. The subject took the basketball the victim was holding and walked into a stairwell. The victim followed the subject into the stairwell. There, the subject touched the victim's breasts three times and attempted to kiss her. The victim elbowed the subject in the face and ran out of the stairwell. *Id.* The subject received nonjudicial punishment and was disenrolled from the Academy. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The fifth case, AFOSI Report of Investigation, Exhibit 393, involved multiple female cadet victims whose backs and shoulders the subject rubbed without their consent. This activity took place over the course of an academic year. During the course of rubbing the victims' backs and shoulders, the subject touched the breasts of two of the victims and the vagina of another victim. *Id.* Court-martial charges were initiated against the subject, but the Article 32 Investigating Officer recommended not proceeding to trial. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. Instead, the subject received nonjudicial punishment, however, the commander offering the nonjudicial punishment subsequently determined that there was insufficient evidence and withdrew the nonjudicial punishment. *Id.* The sixth case, AFOSI Report of Investigation, Exhibit 401, involved the subject entering into the female cadet victim's dorm room to have a conversation with her. The subject attempted to kiss the victim. The subject then touched the victim's breasts and attempted to kiss her breasts even though she told him "no" several times. *Id.* The subject received nonjudicial punishment and resigned in lieu of involuntary discharge. The characterization of the discharge was Honorable. DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 381. The seventh case, AFOSI Report of Investigation, Exhibit 344, involved a female cadet victim who had been watching a movie and drinking with the subject. The victim went with the subject to his room. There the subject kissed the victim and then pushed the victim's head to his groin. The victim stated she performed fellatio on the subject because she was fearful. When the victim stopped performing fellatio the subject digitally penetrated her with what "felt like his fist." The subject then had the victim masturbate him. The subject then rolled the victim onto her stomach and anally penetrated her with his penis despite her protestations. *Id.* The subject received nonjudicial punishment and voluntarily resigned in lieu of a hearing before a Board of Officers. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The characterization of the discharge was General (Under Honorable Conditions). DD Form 214, Certificate of Release or Discharge from Active Duty, Exhibit 382. The command accepted the subject's conditional voluntary resignation because the victim did not want to testify about the incident. Memorandum for Record of Discussions with Prior Staff Judge Advocates, Exhibit 336. The eighth case, AFOSI Report of Investigation, Exhibit 346, involved a female civilian minor. The subject was the guest of the victim's parents and was spending the night at the victim's home. During the early morning hours the father was awakened and saw the victim leaving the restroom. The father confronted the victim who denied anything was wrong. The father then confronted the subject who told the father that he and the victim had engaged in "heavy petting" while both were fully unclothed. The subject denied engaging in sexual intercourse. *Id.* The subject received nonjudicial punishment and was disenrolled from the Academy. Data of Sexual Assault Allegations (Suspect Information), Exhibit 383, Attachment 8. The subject was subsequently discharged and the Air Force Personnel Council concurred with the Superintendent's request that the subject's service be characterized as Honorable. Memorandum, Re: Cadet Disenrollment, October 13, 1995, Exhibit 377.

¹³²⁰ Subject and a female cadet victim had the same sponsor and were both staying overnight at the sponsor's residence. At approximately 1:00 a.m. the subject awoke and began thinking about the victim who was sleeping in another bedroom. AFOSI Report of Investigation, Exhibit 348. According to the subject, he got out of bed and went to the bathroom. Afterwards, being in a sexually excited state with a semi-erect penis the subject went to the room the victim was sleeping in. *Id.* Subject tried to wake the victim by touching her and saying her name, but the victim did not wake. *Id.* The subject then began to kiss and caress the victim's body and the victim awoke. *Id.* The subject continued to caress the victim, placing his hands on her covered breasts. The subject asked the victim if she wanted to do anything and the victim stated "no." *Id.* The subject continued to caress the victim in an attempt to sexually arouse her. The subject noticed the victim's body was tense and that she was holding an oriental sword between her legs to stop his

In summary, of the forty-three cases considered, we disagreed with the reasonableness of the criminal disposition of one case. We questioned, but could not form an opinion on, four others. Although there were cases where we would have favored use of formal criminal processes to resolve close factual issues, disciplinary action generally appeared to be within reasonable boundaries of discretion. We did not attempt to assess the reasonableness of characterization of discharge.

advances. *Id.* The subject continued by kissing up and down the victim's stomach area to her pubic area. *Id.* As he continued to caress her on two or three occasions he placed his hand on her vagina by coming up from behind her where the sword was unable to block his advances. The victim attempted to block subject's advances, but he managed to insert a finger into her vagina. *Id.* The victim's statement was consistent, including her refusals to the subject indicating her unwillingness to participate. *Id.* In making the decision whether to pursue criminal charges, the command considered the fact that the subject's sponsor, at whose home the incident occurred, gave the subject a glowing character statement. The sponsor was less than laudatory on behalf of the victim. Memorandum for Record of Discussions with Prior Staff Judge Advocates, Exhibit 336. In addition, the command questioned the sufficiency of the evidence. *Id.* The subject voluntarily resigned from the Academy, with a General (Under Honorable Conditions) service characterization. Secretary of the Air Force Action on Cadet Disenrollment, Exhibit 380.

VII. Findings and Conclusions

The Working Group found no systemic acceptance of sexual assault at the Academy, institutional avoidance of responsibility, or systemic maltreatment of cadets who report sexual assault. Instead, the Working Group found considerable attention to programs intended to encourage reporting, avoid incidents of sexual assault and support victims. However, the Working Group also found the focus on sexual assault issues had varied over time and lessened in recent years, and a number of culture and process matters are problematic. Collectively, they produced a less than optimal environment to deter and respond to sexual assault or bring assailants to justice. They demonstrate work that needs to be done to ensure that victim support and institutional values are consistently addressed. Listed below are a series of findings and conclusions regarding particular aspects of the Academy processes and related matters that the Working Group found to be significant. Recommendations follow. As explained at the beginning of the Report, individual cases and complaints were referred to the Air Force Inspector General for investigation and will be resolved in those channels.

1. The Academy has used a unique definition of “sexual assault” since at least 1997, and particularly since 2000, in its sexual assault deterrence program and in its reporting and training processes. This definition, which was expansive and not linked to specific crimes, was susceptible to misinterpretation, may have caused confusion regarding issues of consent, and may have created incorrect perceptions of the law and unrealistic expectations in victims about command and legal abilities to take adverse actions against assailants. As most allegations have been reported only to the Cadet Counseling Center and have contained little detail, it is not possible to ascertain whether many reported allegations would have met ordinary criminal concepts of sexual assault.
2. Since 1993, the Academy has provided an extensive program to deter and respond to incidents of sexual assault. Over the years, the program has grown considerably, providing counseling, medical, and other services to victims. It has incorporated the use of cadet volunteers, as well as trained victim advocates, to provide Hotline and referral services. While this Academy-unique program has provided valuable services, in some instances because of its victim-controlled, confidential process it has impaired communication among victims, investigative agencies, legal personnel, and command.
3. Since 1993, the Academy’s sexual assault support program has offered limited confidentiality to victims to encourage reporting. This has provided victims the opportunity to seek assistance while allowing them to significantly control the information they provided, including, to a great extent, whether their own identity and the identity of their assailant would be passed on to command and investigative agencies. This practice precluded command and investigative organizations from having access to some information that may have resulted in the timely investigation and prosecution of assailants. Further, it suggested to cadets that command could not be trusted to respond appropriately, a concept antithetical to military principles and the training of future military leaders.
4. Beginning in 1993, the Academy instituted a process whereby cadets could receive “amnesty” for cadet infractions associated with the activity leading to or a part of a sexual assault. In 1997, this process was incorporated in the Academy Instruction pertaining to sexual assault. The purpose of offering amnesty was to encourage victims to report offenses by reducing their fear of being

punished for infractions related to the assault (e.g., alcohol violations). Its application to victims and witnesses was, by design, discretionary; however, it was not well understood by cadets or leadership, and uncertainty as to its efficacy reduced any effect it may have had in encouraging reporting.

5. By 2002, the Sexual Assault Services Committee, the group since 1995 charged with oversight and coordination of responses to sexual assault, was meeting less often, was poorly attended, and had become more of a pro forma activity compared to earlier practices. It was not effectively engaging all the components responsible for deterrence of and response to sexual assault.

6. Responsibilities for the overarching DoD and Air Force-prescribed Victim and Witness Assistance Program were not being fulfilled through the designated legal office, nor were all the parties responsible for the sexual assault program represented in the overarching program. Similarly, some of the agencies required by the overarching program for the delivery of victim services were not represented on the Sexual Assault Services Committee, nor were they receiving required training. Consequently, effective coordination of victim requirements across all responsible entities, and advice to victims regarding some of their entitlements, were missing, including consistent advice on the investigative and legal processes.

7. Since 1993, the Academy has increasingly provided training with the objective of deterring sexual assault, supporting victims, developing good character, and having proper human relations. However, there is little in the sexual assault training program itself that directly addresses the importance of good character in relation to deterrence of sexual assault, and there are some concerns about the timing of Fourth-Class cadet sexual assault training.

8. Academy programs related to sexual assault and sexual harassment have been conducted under different mission areas (the Dean of Faculty and the Commandant, and 10th Air Base Wing) and have not been effectively integrated.

9. Perceptions exist at the Academy that the Air Force Office of Special Investigations is unfriendly to victims. Regardless of whether the perceptions are based on fact, these perceptions can chill victims' willingness to report sexual assaults to this primary investigative agency. Statements and attitudes of victim support personnel at the Academy may have inadvertently contributed to these perceptions.

10. Chaplains have been a source of assistance to victims of sexual assault at the Academy, but they do not receive special training in this area. While maintenance of strict confidentiality for qualified communications with chaplains is required, communication of non-individual-specific information to command to assist in overall awareness of problem areas could be helpful, and chaplains could encourage victims to report allegations.

11. While providing medical services for victims of assault at the Academy Hospital and Cadet Clinic, the Academy has made use of the specialized rape protocol/rape kit services available at Memorial Hospital in Colorado Springs, Colorado. This has ensured that these services that require specialized forensic training, specialized equipment and maintenance of nurse practitioner skill levels through frequent practice, are provided in accordance with acceptable standards.

12. The Academy sexual assault program, at least since 1997, relied upon a 1997 Air Force Surgeon General waiver to the Air Force Instruction that requires medical personnel to report sexual

assaults to law enforcement. This waiver was subject to review after one year, and expired on July 1, 1998, with no indication a follow-on review was sought.

13. Lack of feedback to cadets and others at the Academy about sexual assault cases has left them largely uninformed about current sexual assault issues at the Academy. Lack of feedback to alleged sexual assault victims about discipline of offenders may cause some victims to lack trust and confidence in command and in the Academy's process to respond to allegations of assault. Privacy Act concerns, as expressed by legal counsel to commanders, have driven decisions of what information could be released.

14. Sexual assault at the Academy often involves the use of alcohol (40% of cadet-on-cadet investigated allegations). Intoxication and alcohol in the dormitories are reported to be significant issues.

15. Though there are few details on many of the sexual assault allegations at the Academy, of the allegations investigated in which details were identified, there is a recurring scenario. In the majority of the known allegations, the alleged assailant and the victim were acquaintances or friends and had been involved in some consensual social interaction either among themselves or within a group. A significant number of the allegations also involved the use of alcohol either by the victim, alleged assailant, or both. Additionally, a significant number of cases involved some consensual sexual activity prior to the alleged assault.

16. While unacceptable at any level, the number of alleged assailants represent less than one percent of the male cadets at the Academy over the last ten years. About half of the investigated allegations have not produced evidence sufficient for military justice action.

17. Fear of discipline and its effects on cadets' careers, peer ridicule, ostracism and reprisal, loss of privacy and loss of reputation are factors bearing on cadets' reluctance to report sexual assault.

18. A climate among cadets of inappropriate, gender-based comments about women and other forms of sexual harassment persists at the Academy. While this climate appears to affect a significant number of women, it may vary among squadrons. The actual extent and severity of the problem is not reliably known nor is its affect on sexual assault understood. Air Force Military Equal Opportunity Programs, including assessment programs, have not been fully applied to the cadet population.

19. Since at least 1993, there has been a tendency for cadets to place loyalty to peers above loyalty to values, resulting in toleration of behavior associated with sexual assault, such as toleration of violations of alcohol restrictions, cadet fraternization, and sexual activity in the dormitories. Misplaced loyalty to peers has been a matter of official concern at the Academy for many years and it remains a concern, including the extent to which it may be encouraged by Basic Cadet Training and the cadet authority structure.

20. The cadet authority structure, and the fact or perception of the relatively powerless position of Fourth-Class cadets (freshmen), as well as the circumstances of Basic Cadet Training, appear to be factors in some sexual assault allegations. (Fourth-Class cadets were disproportionately represented as alleged victims.) The timing of sexual assault and personal rights training (when cadets are overwhelmed during their intensive indoctrination process), and lack of clarity regarding Fourth-

Class cadets' right to deny upper class cadets' access to their rooms at inappropriate times, can make Fourth-Class cadets more vulnerable to upperclassmen who may abuse power.

21. Cadet leadership is a vital aspect of overall leadership at the Academy, and it is the leadership element in closest proximity to potential victims and assailants. Consequently, solutions regarding sexual assault and gender bias must feature cadet leadership's (and Cadet Wing's) acceptance of responsibility for standards, enforcement of standards, prevention of sexual harassment and peer reprisal, as well as taking active responsibility for their subordinates' welfare.

22. The Academy does not include leadership classes as a mandatory academic area, nor is attendance at the Center for Character Development programs a requirement for graduation or commissioning.

23. There has been no Academy-wide mentoring program for women or men that would assure an informal support structure for individual cadets, particularly Fourth-Class cadets (freshmen) who need it most. Personal support for Fourth-Class cadets has been inconsistent across the Academy community.

24. Although a study of methods for measuring character development has begun at the Academy, there is currently no process in place to reliably measure character development.

25. Although not the case when women were first admitted to the Academy in 1976, women's dormitory rooms have since been intermingled with men's rooms in their squadron dormitory areas. This is not consistent with Air Force housing instructions or Air Force practice. Further, women's bathrooms have been at a distance from many of the women's rooms causing them to travel the halls for some distance in robes or athletic attire.

26. Until January 2003, officer and noncommissioned officer presence in the dormitories at night was not extensive. Since that time, arrangements have been made to provide significant officer and noncommissioned officer presence throughout nighttime hours.

27. From at least 1993 forward, deterring and responding to incidents of sexual assault was a focus for command personnel. However, this direct focus appeared to gradually lessen after 1997, due in part to competing demands.

28. During the last Commandant's administration, due to a combination of the evolution of Academy practices, misunderstandings about the Commandant's role and competing demands on the Commandant's time, he was less involved in the sexual assault processes than recent predecessors had been. The Commandant sought, as had a prior Commandant, to have the sexual assault program within the Cadet Counseling Center brought under his command (as it had been until late 1996 when it was moved under the Dean). However, the Commandant was not able to persuade others, including the Superintendent, to support the realignment.

29. In pursuit of a mandate from the former Chief of Staff of the Air Force to tighten cadet standards at the Academy, the last Commandant, and particularly his Training Group Commander, had become perceived by many as focused on discipline, although the disciplinary levels were not inconsistent with historic levels, nor as severe as the perception. A poor working relationship among the Academy mission elements led to a decline in communication and coordination among

the various components of the Academy necessary to effectively respond to allegations of sexual assault suffered.

30. In at least one case in 2002, the Training Group initiated disciplinary processes for infractions against a cadet who alleged sexual assault, based upon alleged infractions by the victim known to command independently of the sexual assault allegation. While the commencement of the discipline process is not technically the imposition of discipline itself, and punishment was not in fact imposed, such action created an appearance among some that leadership was more interested in discipline than support of victims. This perception served to erode cadet trust and confidence in the Academy's sexual assault response processes and made the victim feel punished.

31. A review of investigated allegations by members of the Working Group's staff team experienced in military justice indicates that Academy's disposition of cases over the last ten years has generally been within reasonable boundaries of discretion, but also suggests that the Academy community might benefit from greater consideration of the use of formal criminal processes in close cases.

32. The Academy's leadership deemed the command experience and qualifications of Air Officers Commanding (AOCs) and Military Training Leaders (MTLs) inadequate to provide the best leadership and role models for cadets. In recent years, assignment procedures have not allowed for individual selectivity in filling these key positions. An earlier Masters degree program to provide AOCs with the skills needed for the job was terminated. Although improved under the last Commandant, training for AOCs and MTLs has not been extensive.

33. In the Air Officer Commanding positions, the assignments that provide the best opportunities to model professionalism and officership for male and female cadets, the presence of women has been minimal in recent years.

34. Attendance at CAPSTONE and other non-Academy duties has, at least for the past three Commandants, caused them to be away from their duties at the Academy for significant periods of time.

35. A Social Climate Survey was conducted by the Academy covering gender climate and alcohol abuse from 1992 to 2002, and covering sexual assault since 1996, but the usefulness of the results and the adequacy of the surveys were questioned and the results were not consistently provided to command.

36. There is no single entity responsible for developing and assessing the results of the Social Climate Survey. Over time, the Academy parsed responsibility for various discrete parts of the survey between the Center for Character Development (which falls under the Commandant) and the Cadet Counseling Center (which falls under the Dean), leaving the overall survey without a single entity to ensure quality, assessment, trend monitoring or dissemination to leadership. Sexual assault survey results were not provided to command for 1998, 2000, or 2001; sexual harassment results were not provided for 2000 and 2002; and alcohol results do not appear to have been provided since 1996.

37. In addition to the lack of awareness and communication pertaining to the Social Climate Surveys, the Working Group identified problematic aspects of the construct, administration, and

assessment of the surveys. The perception by some mid-level Academy personnel of these problematic aspects appears to have contributed to their decisions not to rely upon or make leadership aware of the survey results.

38. Although the sexual assault questions in the surveys were not of desirable quality, particularly to allow a comparison of changes over time and to assess whether the reported assaults were actually connected with the Academy, in some cases they did provide some information indicating that sexual assaults as defined at the Academy against cadets may be occurring in greater numbers than was reported to the Cadet Counseling Center.

39. Although the Academy recently initiated measures to improve the survey instruments to assess sexual assault and related matters, at present there are no adequate means of reliably measuring sexual assault or gender climate over time.

40. The Working Group found no consistent mechanisms in effect at the Academy for reliably comparing Academy sexual assault data with other academies, civilian schools or other institutions. The Academy's unique definition of sexual assault and its unique confidential reporting process make reliable comparisons difficult. Data was not available to compare the Air Force Academy to other service academies.

41. Activities of the two legal offices at the Air Force Academy as they pertained to cadet misconduct have not been formally delineated. Different legal offices handled different aspects of a case, leaving the potential for incomplete, inconsistent or uncoordinated legal advice. There are three separate special court-martial convening authorities at the Academy, providing the potential for inconsistent treatment of similar offenses among the cadets, faculty and support communities.

42. The Working Group was unable to obtain some records that showed the rationale for disposition of allegations when criminal charges were not pursued. While there was no requirement for the Academy to create such records in some cases, or maintain such records beyond their normal file disposition dates, this left questions unanswered.

43. Permanent party personnel have tended to serve recurring and/or extended tours of duty at the Academy and a significant proportion, particularly in senior leadership roles, are Academy graduates. While some stability is desirable in an academic environment, these circumstances can lead to isolation from the Air Force, complacency and diminished current, operational perspectives.

VIII. Recommendations

The Working Group recommends the following:

[Note: Where marked with an asterisk (*) the recommendations are ones made, in whole or in part, in the March 19, 2003 Memorandum from the General Counsel to the Secretary and Chief of Staff of the Air Force, which included preliminary findings of the Working Group. Recommendations marked with two asterisks (**) are ones that have been addressed in whole or in part, in the “*United States Air Force Academy -- Agenda for Change*” memorandum, issued by the Secretary and Chief of Staff on March 26, 2003.]

1. Conform Academy definitions of sexual assault, and policy and processes regarding the reporting and investigation of sexual assaults to Air Force definitions, policy and processes with sexual assaults immediately reported to command. In connection with this, modify Academy training and training materials to conform to Air Force practice. * ** [The Secretary has requested the General Counsel to assist in the development of clear definition of terms.]
2. Effectively integrate all Academy agencies charged with responding to sexual assault, (including the “Academy Response Team” or “First Responder Team” required by the *Agenda for Change*)* ** using the Air Force Victim and Witness Assistance Program (VWAP) as the overarching process. Meld the cadet counseling and Sexual Assault Services Committee processes with the VWAP process. Ensure the First Responder Team is immediately called when there is a report of an allegation of sexual assault. Provide the Academy community with detailed information on how victim support will be assured. The First Responder Team should include medical, legal, AFOSI, Security Forces, Cadet Counseling Center and Air Officer Commanding representatives. ** Under normal circumstances, AFOSI should be responsible for the collection and proper handling of all evidence in connection with a sexual assault investigation.
3. Provide extensive training in sexual assault matters, including victim psychology, psychological profiles of offenders, predatory behaviors, victim support and advocacy to all those who will serve as part of The First Responder Team, including the AFOSI, lawyer representatives and Air Officers Commanding.** Ensure similar training is provided to Military Training Leaders, chaplains, prosecutors, and investigative personnel, and provide for this training to be repeated as necessary as personnel changes.
4. Recognizing that the *Agenda for Change* ended the Academy’s unique confidential sexual assault reporting processes, it will be important to provide in their place substantial victim support that continues to make victim support a high priority. Involve the command structure closely in that victim support and protect the privacy of victims. * ** Preserve the positive aspects of the Academy’s program that are consistent with the *Agenda for Change* (to the extent allowed by law) and actively address victims’ reluctance to report sexual assault.
5. In all reported cases of sexual assault, provide amnesty to victims and others consistent with the *Agenda for Change* * ** Clarify the applicability of “amnesty” for victims of sexual assault, addressing the scope of infractions that may be covered (recognizing that cadet discipline is sometimes substituted for criminal sanctions), the extent to which conduct antecedent to the particular events of the assault may be covered (e.g., whether a pattern of minor misconduct over

time leading up to the assault may be excused), whether amnesty would preclude consideration of the underlying conduct for commissioning purposes, and, short of disciplinary action, what appropriate command action may be taken (such as counseling). In situations where amnesty does not apply, whenever feasible, defer initiation of discipline for a person alleging sexual assault until the sexual assault issues are resolved.

6. Train Counseling Center personnel, including counselors, cadet volunteers and victim advocates on the law concerning definitions of the crimes constituting sexual assault and the issue of consent, and have them refer victims' questions about what may be assault or consent to the judge advocate advising the Vice Commandant.
7. Increase the frequency and effectiveness of sexual assault deterrence training (not just victim support and sexual assault avoidance training), emphasizing small groups, cadet participation, * and a focus on character, including the ethical use of power, as the principal deterrent to sexual assault. Encourage integrated cadet, faculty and staff interactions on character issues related to sexual assault on various levels, not solely formal training. Establish measures of merit to determine effectiveness.
8. Provide Air Officers Commanding and Military Training Leaders with resources and assistance in making sexual assault deterrence and response an integrated part of squadron training, and prepare them to deal effectively with reports of sexual assault and related issues.
9. Reevaluate the *Agenda for Change* decision to use Academy medical resources to provide rape protocols. While keeping Academy medical personnel involved in patient care, integrate them with the specialized rape protocol services at Memorial Hospital to ensure the use of trained forensic personnel who are able to maintain appropriate levels of currency and training in these specialized procedures by means of frequent and regular practice.
10. Clarify in Air Force directives that Cadet Counseling Center personnel, and others associated with the Sexual Assault Program, are required to report sexual assaults to command and the Air Force Office of Special Investigations.
11. While safeguarding chaplain confidentiality, ensure chaplains are fully integrated in the sexual assault deterrence and response processes, including integration of non-confidential information into sexual assault assessment methods.
12. Provide feedback to victims of sexual assault on case dispositions to the maximum extent allowed by law. Provide consistent feedback to the Cadet Wing, faculty, and staff on disposition of discipline cases to the maximum extent allowed by law. * ** [The General Counsel has been instructed by the Secretary of the Air Force to revise Air Force and Academy instructions to provide for the maximum dissemination of information allowed by the law.]
13. Evaluate current standards regarding the use of alcohol. * Consistently track alcohol problem indicators and make the information available to command. Take appropriate action to deter alcohol violations, particularly regarding misuse of alcohol and underage drinking. Ensure continuing viability of Academy programs to address alcohol abuse prevention.
14. Aggressively employ all means available to eliminate sexual harassment and gender bias, including the resources of the 10th Air Base Wing Military Equal Opportunity Office. Consider

realigning this office under the Superintendent, from the Air Base Wing, to improve cadet access and to emphasize senior leadership interest. Comply with Air Force Military and Equal Opportunity and Treatment Program requirements.

15. Reinforce, repeatedly and Academy-wide, the importance of loyalty to values over loyalty to peers. Teach the concept of “earned” loyalty so that when a peer violates expected conduct and imperils the unit, loyalty to the unit outweighs loyalty to that peer. * **

16. Reevaluate the cadet rank structure and the fourth-class system to reduce the potential for abuse of subordinate cadets, with a particular view to safeguards to protect Fourth-Class cadets from behavior by those who may seek to take advantage of their relative lack of power. * **

17. Engage cadet leadership in planning and executing measures to build and institutionalize loyalty to values above peers, and assured victim support free of fear of peer reprisal.

18. Clarify and continually emphasize to all cadets (especially those in leadership positions over Fourth-Class cadets) the ethical use of power in leadership roles and the Fourth-Class cadet’s right to say “no” to inappropriate requests or demands from superior cadets. *

19. Establish formal support structures for Fourth-Class cadets, i.e., a formal mentoring program, in which upperclass cadets would be responsible for the welfare of their respective Fourth-Class cadets, as well as other mentoring opportunities. * **

20. Make leadership classes part of the mandatory academic curriculum of the Academy, and make successful participation in character development programs requirements for graduation and commissioning. * **

21. Establish effective mechanisms, including interim measures, by which Academy and Air Force leadership can assess the progress of character development at the Academy, * ** and assess cadets’ character prior to commissioning.

22. Conduct assertiveness evaluations of Fourth-Class cadets and, where indicated, provide assertiveness training.

23. Adjust room assignments to enhance mutual support of female members, particularly female Fourth-Class cadets (freshmen), while preserving squadron integrity. * **

24. Ensure continued nighttime officer and noncommissioned officer leadership, oversight and supervision in the dormitories. * **

25. In addition to case-by-case command and legal determinations, ensure that all decisions regarding discipline, disenrollment and discharge are reviewed in the aggregate at least semi-annually to examine disposition trends and their appropriateness. To this end, and to facilitate explanation of deviations when necessary, insure that decisions and the rationale for them are documented and retained.

26. Reduce the demands on the Commandant that may cause him or her to be absent from the Academy for extended periods of time including absence for CAPSTONE, and/or consider raising the rank for the position to major general.

27. Implement highly selective assignment processes for Air Officers Commanding and Military Training Leaders, and enhance training for them to provide the best leadership and role models for the cadets. Reinstate the Masters educational program for AOCs. * **
28. Consider appropriate measures to increase the number of female AOCs, MTLs and others in leadership positions at the Academy, and to provide increased opportunities for role modeling of successful female officers for the benefit of male and female cadets. * **
29. Establish effective mechanisms by which Academy and Air Force leadership can measure and monitor sexual assault and related gender climate trends, * ** and validly compare them to relevant organizations such as other military academies and appropriate civilian institutions. Ensure proper construct, administration, and assessment of the surveys, including consultation with Air Force experts beyond the Academy. Establish a long-term plan to measure longitudinal comparisons of survey results. Specifically, develop surveys that over time will reliably measure the extent and nature of sexual harassment and assault.
30. Ensure that a single Academy leader (either the Dean or the Commandant) is directly responsible for receiving, assessing and informing the Superintendent and all Academy leaders of results from all aspects of the surveys and other statistics on sexual assault. Provide survey results, statistics and analysis, to the Secretary of the Air Force and the Chief of Staff annually.
31. Make use of standard Air Force Unit Climate Assessment tools within the Academy's Training Wing, including cadets, to provide comparative data and insights to Command.
32. While retaining the general court-martial convening authority of the Superintendent, reduce the three special court-martial convening authorities at the Academy to a single special court-martial convening authority for the entire installation to encourage consistency across all cases. *
33. Consolidate the Academy legal office and the 10th Air Base Wing legal office into a single legal office at the Academy, providing integrated legal services to the Academy and across all legal issues related to cadets.
34. Review adequacy of physical security arrangements for the cadet area to maximize cadet security. *
35. Review the appropriateness of permanent party recurring tours at the Academy, cumulative time on station and commission sources. * **
36. Conduct a review of Academy manpower to determine whether manning levels are adequate to ensure the effective operation of key processes.

IX. Areas Recommended for Further Study

In the course of conducting this review, the Working Group encountered a number of areas that were beyond the scope of our activities or for which time did not allow adequate study, and did not result in specific recommendations, but merit further study and, potentially, recommendations for command action. They are listed below.

1. The Extent to Which Academy Processes Differ from Air Force Processes. There are many aspects of cadet life that are different from ordinary Air Force life. Among them are the cadet disciplinary process, cadet performance evaluations, and cadet rules of conduct. Some interviews suggested that the Academy processes in some respects train cadets to be cadets, rather than to be officers. It seems worthwhile to critically examine the entire cadet experience using as a measure the extent to which any given process differs from Air Force processes or standards, the degree to which that is justified, and whether the justification warrants continuation of the difference. A related analysis would be whether, to the extent the differences are warranted, they should be continued throughout the cadet experience or whether they should be exchanged for Air Force processes as the cadet progresses in the cadet career. (See, among other sources, the interview of Maj Gen (sel) Welsh, former Commandant.)
2. Review for Commissioning Suitability. The Academy's Character Development Review Panel, in its July 2002 report, noted the panel members' belief that there are identifiable cadets who, although not necessarily in overt difficulty have persistent negative or marginal attitudes or behavior that may not suit them for commissioning. The panel suggested implementation of processes to screen cadets for commissioning suitability before they move from the sophomore year to the junior year and incur a service commitment. Lieutenant General Hosmer's interview also reflected the need to review cadets for worthiness of commissioning in the final year. Consider implementation of this concept, as well as other measures to ensure that cadets meet the highest standards for commissioning. In doing so, consider making distinctions between suitability for commissioning and graduation, allowing greater discretion in awarding a degree where commissioning may nonetheless be inappropriate, and declining to commission the cadet.
3. Fourth-Class System. Consideration of the viability and utility of the Fourth-Class cadet/ "doolie" training approach in present times may be warranted. Questions include whether the current system is the one best suited to prepare cadets to be officers; whether the duration of the "doolie" period is too long or could be shortened to good effect; and whether treatment of cadets during the "doolie" period should be modified. In doing so, consideration of the processes in effect at the other Service academies, civilian military academies, as well as Air Force Basic Military Training, Air Force Reserve Officer Training Corps, and Officer Training School may be of value. In addition, consider giving greater freedom to make decisions (and mistakes) to more senior cadets in order to enable them to demonstrate responsibility (or lack thereof) for suitability of commissioning.
4. Preparatory School. The Working Group did not examine the status or processes pertinent to sexual assault at the Academy Preparatory School. A separate examination by the Academy would be well advised to ensure that lessons learned are carried over to that environment.

5. Interface of the Athletic Department with the Training Wing. In the course of our inquiry, we received repeated comments regarding perceptions of different standards for intercollegiate athletes and inconsistencies between adherence to cadet rules in the athletic areas and in areas under the Training Wing. While the *Agenda for Change* places the Athletic Department under the Training Wing, this aspect of treatment of athletes versus other cadets remains worthy of further study, including ways to communicate to cadets and other Academy personnel the facts relevant to any justifiable differences, as perceptions alone can undermine the effectiveness of the cadet training environment. We note that an on-going General Accounting Office study expected in September 2003 may be of assistance.

6. Relative Tours of Duty of Senior Leadership. In recent years, Commandants have served one to three years in the position, while the Athletic Director and the Dean have been in place for many more. The extent to which the dissimilar periods of longevity impact relations between the mission areas, and any “asymmetric disadvantage” this may produce for the interests of the Training Wing, as well as the turbulence frequent rotations of the Commandant produce for the other mission areas, appear to merit consideration.

7. Faculty Members. There is some concern that some faculty members at the Academy may not understand the need to treat females in an equal manner and that some faculty members may adopt an academic attitude that is not consistent with training military officers. The selection, orientation, and retention of faculty should be examined to assure they are contributing to the goals of the Academy and the Air Force in the training of tomorrow’s officers.

8. Character Evaluations of Prospective Cadets. It appeared from superficial inquiry that the Academy’s means of assessing the character and suitability for military life and future commissioning of prospective cadets during the admissions process are somewhat limited, and turn largely on limited interviews by Academy liaisons. Whether this is an issue, and if so the means by which it may be addressed (including the usefulness of psychological testing) warrants further inquiry.

9. Security Forces Involvement in Cadet Security. Assess the adequacy of Security Forces involvement in the cadet area.

10. Other Commissioning Sources. We recognized when the study began that there is a need to examine sexual assault issues at the other Air Force commissioning sources (Officer Training School and Air Force Reserve Officer Training Corps). This remains to be done, and should be done.

11. Board of Visitors. The Board of Visitors consisting of members of the Senate and House of Representatives, as well as Presidential appointees, constituted by 10 U.S.C. § 9355, is charged with inquiring into morale, discipline, and other matters at the Academy. A brief review of information provided to that Board since 1993 indicates that an examination of the means of keeping the Board informed, particularly on matters related to sexual assault, may be warranted.

12. Air Force Headquarters. Consider to what extent the Headquarters Air Force has been and should be involved in the oversight of the sexual assault and sexual harassment issues in the Air Force, including the Academy.

Appendix A

Relevant Reports

1. General Accounting Office Reports

On three occasions between 1993 and 1995, the General Accounting Office conducted assessments and prepared reports relevant to the issues of sexual harassment and/or sexual assaults at the Academy. These GAO reports addressed gender and racial disparities as well as sexual harassment. They also contained detailed findings supported by statistical analysis, commentary on the relevant issues, and recommendations for improvements. Starting as early as the September 1993 report, the GAO noted deficiencies in the collection, storage, and analysis of pertinent data at the Academy, which hampered its ability to conduct a meaningful assessment. The report said, “(d)uring our own work, we encountered time-consuming difficulties in collecting needed performance indicator and adjudicatory data because the Academy has no standardized, consolidated data base.”¹³²¹ The Working Group’s staff team experienced the same difficulties and frustrations during its work nearly a decade later.

September 1993 Report

In 1993, the Chairman of the Senate Committee on Armed Services and the former Chairman of its Subcommittee on Manpower and Personnel asked the GAO to examine the treatment of women and minorities at the military academies. The GAO reported on disparities at the Air Force Academy in September 1993, and addressed differences in performance indicators between men and women and between whites and minorities, cadets’ perceptions of the fairness of the treatment of female and minority cadets, and specific actions the Academy had undertaken to enhance the success of women and minorities.¹³²²

The 1993 Report found the Academy had taken a number of steps to address issues affecting women and minorities in the preceding years. For example, the Academy required that all cadets complete courses in human relations and created several councils and committees to offer guidance and counseling to cadets on appropriate treatment of women and minorities. In 1992, the Academy’s Department of Behavioral Sciences and Leadership administered a survey of attitudes and behaviors toward sexual harassment and racial discrimination. About 3,900 of the Academy’s 4,400 cadets participated in the survey. In February and March 1993, the Defense Equal Opportunity Management Institute visited the Academy, conducted an assessment, and made recommendations to improve its human relations climate. The team found that the overall human relations climate was good, but commented, “(t)he existence of sexist and racist behaviors (e.g., jokes and racially derogatory remarks) if left unchecked could eventually detract from the Academy’s mission.”¹³²³ Finally, on May 20, 1993, the Academy’s Ad Hoc Committee on Respect

¹³²¹ GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43 at 51.

¹³²² Congress authorized the creation of the Air Force Academy in 1954. It has admitted minorities since its inception, but women were not allowed to attend until 1976. Approximately twelve percent of the cadets in the class of 1993 were women. GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43 at 2.

¹³²³ *Id.* at 49. The GAO considered the findings of the Defense Equal Opportunity Management Institute’s assessment in making its determinations. *Id.*

and Dignity issued a report recommending significant human relations initiatives. This included a recommendation to establish an Office of Character Development to serve as the focal point for developing a master plan for cadet character development.¹³²⁴

The GAO recommended that the Superintendent:

- Develop a relational database capability allowing routine analysis of key performance indicators;
- Establish criteria for assessing when disparities warrant more in-depth attention and corrective action; and
- Prepare (1) a plan of action and milestone documents to track actions taken in response to problems revealed through studies or surveys and (2) specify measures with which to assess the effectiveness of the Academy's actions over time.¹³²⁵

January 1994 Report

In 1994, the GAO, at the request of the Chairman of the Senate Committee on Armed Services and the former Chairman of its Subcommittee on Manpower and Personnel, undertook a review of sexual harassment of cadets at the Air Force, Naval, and U.S. Military academies.¹³²⁶ The objectives of the review were to determine the extent to which sexual harassment occurred at

¹³²⁴ *Id.* at 49-50. The Academy created the Center for Character Development to address a variety of character-related issues, including sexual assault. Statement of Lt Gen Hosmer, Exhibit 45, at 25-26. The current Dean of the Faculty was instrumental in the development of the Center and served as the Center's Director from 1994 to 1996. Statement of Brig Wagie, Exhibit 198 at 44-46.

¹³²⁵ GAO Report, Air Force Academy, Gender and Racial Disparities (Sept. 1993), Exhibit 43, at 52. The Working Group found no formal response by the Academy to implement the GAO recommendations and the recommendations contained herein are similar in some respects to those of the GAO in 1993. While the current Dean of the Faculty said he was certain the Academy provided responses to GAO reports, the Working Group did not find any response. Statement of Brig Gen Wagie, Exhibit 209 at 25. Lieutenant General Hosmer discussed the GAO study, but he did not indicate if the Academy submitted a written response. Statement of Lt Gen Hosmer, Exhibit 45 at 5-6. Institution of the Academy Climate Surveys and the Center for Character Development appear to have been in response to the GAO Report concerns, although no records to this effect were found.

¹³²⁶ GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21. The definition of sexual harassment that GAO relied upon in conducting a series of surveys at the Academies varied slightly; however, the GAO definition was closely aligned with the DoD definition, which states:

Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature when:

- (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or
- (2) submission to or rejection of such conduct by a person is used as a basis for career employment decisions affecting that person, or
- (3) such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment."

See GAO Report, DoD Service Academies, Update on Extent of Sexual Harassment (March 1995), Exhibit 22, at 24.

the academies, the forms it took, its effects on those subjected to it, and to evaluate the academies' efforts to eradicate sexual harassment.¹³²⁷ The report echoed a theme stated in the September 1993 report when it said, "(n)one of the academies has developed usable trend data to assess the effectiveness of its sexual harassment eradication program."¹³²⁸ Again, the GAO recommended the Superintendent develop a process to gather and analyze data on the extent of reported and unreported incidents of sexual harassment, and evaluate the effectiveness of sexual harassment eradication programs on the basis of the data.¹³²⁹

The GAO review found that between one-half and three-quarters of academy female cadets experienced various forms of harassment at least twice a month. Female cadets said the basis for the harassment was most often gender, rather than race, religion, or ethnic origin. The harassment usually took the form of derogatory personal comments; comments that standards were lowered for women; comments that women did not belong at the academy; exposure to offensive posters, signs, graffiti, or t-shirts; and mocking gestures, catcalls, accents, or slang. Few female cadets reported unwanted pressure for dates or unwanted sexual advances.¹³³⁰

Additionally, the GAO found that most sexual harassment complaints did not lead to a formal report of harassment. As an example, the GAO noted that between ninety-three and ninety-seven percent of female service academy cadets reported experiencing some form of sexual harassment during academic year 1991, but only twenty-six specific incidents were formally reported, and most of those involved serious forms of sexual misconduct.¹³³¹ The typical reported behavior involved a male cadet entering a female cadet's dormitory room at night and making unwanted sexual advances (for example, kissing, touching, and fondling) toward the sleeping female cadet.¹³³² Cadets said they perceived potential negative consequences to reporting an assault, such as receiving little support from the chain of command and peers, being shunned, and receiving lower grades on military performance.¹³³³ The GAO noted that female sexual harassment victims develop coping mechanisms, such as blocking out the incident, avoiding the harasser, making a joke to diffuse the situation, telling the harasser to stop the behavior, or threatening to file a complaint. Most victims simply wanted the behavior to stop rather than expressing an interest in seeing the offender punished.¹³³⁴ While a majority of female cadets thought a reported incident would be investigated and the offender punished, less than half thought their fellow cadets would support them.¹³³⁵ A substantial majority of both male and female cadets, seventy-three and eighty-five percent respectively, said a person who reported sexual harassment would be viewed as a

¹³²⁷ GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21, at 2.

¹³²⁸ *Id.* at 3. The report noted in particular the failure of the Air Force Academy to conduct routine, systematic program evaluations and cautioned that "[a] disciplined evaluation approach is critical to determining whether current efforts to eradicate harassment are working or new efforts should be tried."

¹³²⁹ *Id.* at 5. As noted earlier, the Working Group did not find evidence of any significant effort to implement the GAO recommendations. *See also*, Memorandum for Record, Group Interview with Academy Personnel, Re: Social Climate Survey Data, Exhibit 62.

¹³³⁰ GAO Report, DoD Service Academies, More Actions Needed to Eliminate Sexual Harassment (January 1994), Exhibit 21, at 3.

¹³³¹ *Id.* at 4, 26. The percentages were derived from surveying the 1,415 female cadets attending the three service academies at the time. The report did not state the actual number of female cadets that said they experienced sexual harassment, although it did give the number that formally reported harassment. *Id.*

¹³³² *Id.* at 4.

¹³³³ *Id.* at 34.

¹³³⁴ *Id.* at 14.

¹³³⁵ *Id.* at 35.

“crybaby.”¹³³⁶ Many of these same behaviors and attitudes were reported again a decade later in a January 2003 Academy survey on sexual assault reporting and treatment.¹³³⁷

March 1995 Report

In 1995, the GAO provided an update to its 1994 Report, comparing the results of their 1990-91 survey with the extent to which sexual harassment was reported to have occurred at the academies in the 1993-94 academic year, the forms it took, and the views of academy men and women on the consequences of reporting it.¹³³⁸ Similar to the previous findings, the majority of female cadets, seventy-eight percent, reported experiencing at least one form of sexual harassment on a recurring basis in academic year 1993-94, while the highest percentage of male cadets indicating exposure to some form of recurring sexual harassment was about eleven percent.¹³³⁹ The proportion of women at the Naval and Air Force academies who reportedly experienced some form of sexual harassment a couple of times a month, or more often, represented a statistically significant increase from the 1990-91 levels. As before, the most common forms of sexual harassment were verbal comments and visual displays.¹³⁴⁰

The GAO concluded that the percentage of female cadets indicating they experienced at least one of the ten forms of sexual harassment on a recurring basis was seventy-eight percent at the Air Force Academy, a notable increase over the last survey of the cadets in 1990-91.¹³⁴¹ Importantly, the GAO found a statistically significant decline in the number of female cadets who believed it likely that offenders would be appropriately disciplined. The percentage dropped from 68% in 1991 to 44% in 1994.¹³⁴² Forty percent of female cadets indicated they would hesitate to report an incident of sexual harassment for fear of reprisal. This percentage did not significantly change from the earlier surveys.¹³⁴³ Again, a substantial majority of female cadets, seventy-five percent, said a victim who reported sexual harassment would be viewed as a “crybaby.”¹³⁴⁴ One female cadet told the GAO, “I was assaulted and I am very displeased with the actions taken.”¹³⁴⁵ The GAO concluded that, given that there had been no apparent change in the perceptions of female cadets regarding the negative consequences of reporting harassment, it was likely sexual harassment would continue to be underreported.¹³⁴⁶

2. Character Development Review Panel Reports

May 2000 Report

In March 2000, Lt Gen Tad Oelstrom, the Superintendent of the Academy at the time, convened a Character Development Review Panel to review the status of the Academy’s character

¹³³⁶ *Id.* at 37.

¹³³⁷ Cadet Written Comments to Sexual Assault Reporting and Treatment Survey, January 2003, Exhibit 143, at 3-4, 7-18, 24.

¹³³⁸ GAO Report, DoD Service Academies, Update on Extent of Sexual Harassment (March 1995), Exhibit 22, at 1.

¹³³⁹ *Id.* at 8.

¹³⁴⁰ *Id.* at 2.

¹³⁴¹ *Id.* at 8. For a description of the ten forms of sexual harassment, *see id.* at 2.

¹³⁴² *Id.* at 17.

¹³⁴³ *Id.* at 21.

¹³⁴⁴ *Id.* at 20.

¹³⁴⁵ *Id.* at 11.

¹³⁴⁶ *Id.* at 22.

development program.¹³⁴⁷ While the issue of sexual assault was not explicitly included in the panel's mandate, many aspects they considered in relation to character development have a direct relationship to the sexual assault issue. The panel met at the Academy on March 13-14, 2000.¹³⁴⁸ The panel's report was submitted to the Superintendent on May 27, 2000. Lieutenant General Oelstrom left the Academy in early June 2000. He recalls some verbal feedback on the report, but does not recall reading the report.¹³⁴⁹ Lieutenant General Dallager and Brigadier General Gilbert did review the report and the July 2002 follow-on report described below.¹³⁵⁰

Several portions of the May 2000 report are pertinent to issues concerning sexual assault. First, the panel noted that strengthening cadet character is a complicated task and requires integration of all facets of the Academy, including close coordination between the faculty, Cadet Wing, and Athletic Department. The panel said, "(s)uch integration was not apparent to the Panel."¹³⁵¹ Second, the panel observed that cadet loyalty to unit goals and ideals was weak while an unhealthy loyalty to classmates was extremely strong and began in Basic Cadet Training (BCT). The panel recommended attacking this problem as a "matter of urgency."¹³⁵² One of the dangers of this misplaced loyalty, according to the panel, is a toleration of violations by fellow cadets. Third, the panel found too much emphasis on talking about character and studying examples of character rather than putting cadets in positions of responsibility and allowing them to learn from the results.¹³⁵³ Fourth, the panel said that the character development program was handicapped by the absence of any method for assessing results, despite indicators available to assess the strength of character of the Cadet Wing. These indicators included: acts of reprisal, poll data reflecting fear of reprisal, disciplinary rates, binge drinking, sexual misconduct (particularly involving abuse of authority), and other forms of abuse of authority.¹³⁵⁴ Finally, the panel noted that the character development program is an ambitious undertaking and will attract resistance and the incentive to "let it slide" will be ample.¹³⁵⁵ To counteract the negative impulses, the panel said strong command interest, particularly a repeated expression of expectations from the Superintendent, was the remedy.

July 2002 Report

Lieutenant General John Dallager, the current Superintendent, invited the panel back for a follow-up assessment in 2002. Lieutenant General Hosmer again chaired the panel, which met in March 2002 and submitted its report in July 2002. The panel found that progress had been made in some areas, but other concerns they expressed in 2000 were not being addressed. One of the positive notes was the increased emphasis on giving cadets greater responsibility and authority by the Commandant, Brig Gen Gilbert. The panel reiterated its earlier statement that action carries more weight than words, saying, "(t)alk, compared to experience, is a secondary influence."¹³⁵⁶ The

¹³⁴⁷ The panel was chaired by Lt Gen Hosmer, former Superintendent at the Academy. Panel members were Mr. Sanford McDonnell (former CEO of McDonnell Douglass), Lt Gen Marcus Anderson, Maj Gen Richard Yudkin, Brig Gen Reuben Cubero, Brig Gen David Wagie, Brig Gen Mal Wakin, Col Michael DeLorenzo, Col Edward Rice, and Col James Dotson. USAFA Character Development Initial Review Panel Final Report, May 27, 2000, Exhibit 195, at 11.

¹³⁴⁸ *Id.* at 2.

¹³⁴⁹ Statement of Lt Gen Oelstrom, Exhibit 63, at 20-22.

¹³⁵⁰ Statement of Lt Gen Dallager, Exhibit 71, at 50 and Statement of Brig Gen Gilbert, Exhibit 10, at 92-93.

¹³⁵¹ USAFA Character Development Initial Review Panel Final Report, May 27, 2000, Exhibit 195, at 3.

¹³⁵² *Id.* at 4.

¹³⁵³ *Id.* at 5.

¹³⁵⁴ *Id.* at 7.

¹³⁵⁵ *Id.* at 9.

¹³⁵⁶ USAFA Character Development Review Panel Second Meeting Final Report, July 2002, Exhibit 196, at 5.

panel said continued attention to this initiative was needed to reverse the impact of many years during which cadet responsibility, authority, and accountability decreased.

The Panel offered suggestions in a number of areas relevant to the current inquiry. First, they urged the Character Development Commission, as the Superintendent's agent, be used with greater force. The panel observed that the role of the Commission was more collegial than executive, citing to the fact that actions were directed by the Commission but sometimes not carried out.¹³⁵⁷ The assignment of junior members to serve as representatives on the Commission was cited as further proof of this observation. Second, the absence of any method to assess results was a handicap. The panel found, nonetheless, that considerable information related to cadet character was currently available and noted that, "(t)he choice to downplay all available current objective information...appears indefensible."¹³⁵⁸ According to the panel, currently available data, if assessed with appropriate skepticism, could produce useful information to guide refinement of character development. Third, the panel addressed the role of Air Officers Commanding as role models with an outsize impact on cadets' behavior. The panel reviewed the Academy's response to this finding, and noted the absence of any reference to the selection and preparation of AOCs was a "revealing omission" that "tends to confirm the suspicion voiced elsewhere that the Commandant's organization is not a full participant in the Academy's integrated character development program."¹³⁵⁹

3. The Defense Equal Opportunity Council (DEOC) Task Force

In March of 1994, the Secretary of the Air Force and the Under Secretary of Defense for Personnel and Readiness were asked to develop a sexual harassment policy action plan. The plan included two aspects: the establishment of a Defense Equal Opportunity Council (DEOC) Task Force on Discrimination and Sexual Harassment to review the Military Services' discrimination complaints systems and recommend improvements, including the adoption of Department-wide standards; and the administration of a Department-wide sexual harassment survey because one had not been fielded since 1988.

The survey, administered and reported in 1995, listed several major findings pertaining to sexual harassment in the military.¹³⁶⁰ Seventy-eight percent of all female respondents using an expansive sexual harassment questionnaire (called a Form B Questionnaire) indicated they experienced some form of sexual harassment in the preceding twelve months.¹³⁶¹ Notably, the survey found that the percentage of women who experienced various forms of sexual harassment had declined since the last Department-wide survey in 1988.¹³⁶² The survey indicated that, of those responding, junior enlisted personnel were more likely to experience sexual harassment than senior enlisted personnel or officers.¹³⁶³ The vast majority of offenders were active-duty military, not civilians.¹³⁶⁴ Approximately one-quarter of those who indicated experiencing an incident of sexual

¹³⁵⁷ *Id.* at 19.

¹³⁵⁸ *Id.* at 9.

¹³⁵⁹ *Id.* at 15.

¹³⁶⁰ Lisa Bastian, Anita Lancaster, and Heidi Reyst, *Department of Defense 1995 Sexual Harassment Survey*, Defense Manpower Data Center (1995) available at http://www.defenselink.mil/prhome/docs/r96_014.pdf.

¹³⁶¹ *Id.* at 26-27.

¹³⁶² *Id.* at 37.

¹³⁶³ *Id.* at Executive Summary, 5.

¹³⁶⁴ *Id.* at 6.

harassment said they reported the incident.¹³⁶⁵ Some respondents who reported sexual harassment indicated that they experienced reprisal after reporting.¹³⁶⁶

Apart from the survey, the DEOC Task Force held nineteen formal meetings from May 13, 1994 through April 28, 1995. On May 5, 1995, the final report of the Task Force was distributed to Congress, the Service Secretaries, and other officials within the Department of Defense.¹³⁶⁷ The report's recommendations were incorporated into DoD Directive 1350.2, Department of Defense Military Equal Opportunity Program, and DoD Instruction 1350.3, Affirmative Actions Planning and Assessment Process.

¹³⁶⁵ *Id.* at 6.

¹³⁶⁶ *Id.* at 6.

¹³⁶⁷ See Edwin Dorn and Sheila E. Widnall, Report of the Defense Equal Opportunity Council Task Force on Discrimination and Sexual Assault, May 1995, executive summary provided at Exhibit 392.

Appendix B

Glossary

Academy Board (Air Force Instruction 36-2020/USAF Instruction 36-169). This board of senior Academy officers consults with the Superintendent on cases regarding deficient cadets, approves cadets for return or reappointment to the Academy (in accordance with 10 U.S.C. §9351) following their disenrollment, establishes graduation standards, and performs other functions specified in USAFA Instruction 36-165, *The U.S. Air Force Academy Board*.

Academic Probation (Air Force Instruction 36-2020). The status of a cadet who fails to achieve a satisfactory academic standing, as determined by the Academic Review Committee.

Academic Review Committee (ARC). The ARC evaluates cadets who are deficient in academics. The ARC may: 1) direct extra instruction or special training; 2) place cadets on or remove them from academic probation; 3) implement other appropriate measures; or 4) recommend disenrollment of or deny graduation to a cadet whose academic deficiency shows a lack of aptitude for commissioned service.

Administrative Turnback (USAF Instruction 36-169). Turnback is requested by a cadet due to a hardship of a temporary nature. It affords the cadet an opportunity to be away from the Academy for one or two semesters in order to resolve the hardship. The program is intended to prevent resignations of cadets otherwise able to successfully complete graduation and commissioning requirements.

Air Officer Commanding (AOC) (34 Training Group Operating Instruction 36-12). An active duty officer who commands a squadron of approximately 110 officer candidates and directly supervises one NCO. Leads, teaches and evaluates cadets through all aspects of cadet and military life. Enforces standards and exercises disciplinary action as appropriate. Primary role model and mentor in the formation of cadet leadership skills and professional qualities. Guides cadet chain of command in maintaining high standards of discipline, developing unit esprit de corps, and implementing training programs. Counsels cadets individually and as a group. Resolves conduct and aptitude problems and makes recommendations as to a cadet's commissionability to Training Wing Commander.

Alcohol Violations (AF Cadet Wing Instruction 51-201). Misbehavior directly involving the cadet's alcohol use (such as DUI or drinking underage), or where the cadet's consumption of alcohol could reasonably be considered as contributing to the misbehavior. Any alcohol violation will result in the cadet being placed on Conduct Probation. The categories of alcohol-related incidents are as follows:

Non-driving. Alcohol-related misconduct not involving a motor vehicle.

Driving. Alcohol-related misconduct where the cadet is the operator of a motor vehicle. Misconduct includes, but is not limited to: any consumption of alcoholic beverages by a cadet driving a motor vehicle; a moving violation; DWAI (driving while ability impaired), blood alcohol content (BAC) between .05 and .099; and DUI with BAC greater than or equal to .10.

Aptitude for Commissioned Service (Air Force Instruction 36-2020). The personality, capacity and inclination to adapt to the relationships, customs and responsibilities of military service and the strength of character and willingness to accept those limits on freedom of individual action that the structure and legal status of military service imposes on its members.

Aptitude Probation (AF Cadet Wing Instruction 51-201). The status of a cadet whose military performance raises doubt concerning his or her aptitude for commissioned service as determined by Commandant of Cadets, his or her designee, or the MRC. A cadet is placed on Aptitude Probation when he or she displays an inability to meet Cadet Wing standards. The minimum period for Aptitude Probation is three months. If a cadet goes over seventy-five demerits in a six-month period they will be placed on Conduct and/or Aptitude Probation.

Athletic Probation (Air Force Instruction 36-2020). The status of a cadet who fails to meet established cadet athletic performance standards, raising doubt concerning his or her aptitude for commissioned service, as determined by the Athletic Director, his or her designee, or the Physical Education Review Committee.

“Babes in Blue.” Informal mentoring program through which female Air Force officers provide advice to female cadets.

Basic Cadet Training (BCT) (AF Cadet Wing Instruction 36-3010). The BCT program is a period of accelerated learning during which fundamental military skills are acquired; physical condition is improved; and by example and instruction the basic cadets increase their confidence and motivation to serve in the Air Force. The BCT program is also a learning experience for the upperclass cadre in the techniques of command, leadership and followership.

Basic Cadets’ Bill of Rights. Brief six-point statement setting forth Basic Cadet rights and informing cadets they are protected from being touched, sworn at, subjected to unwanted sexual advances, having their sleep times violated, or being subjected to cadre training in showers or other inappropriate requests.

Cadet Medical Evaluation Board (CMEB) (Air Force Instruction 36-2020). The CMEB reviews cadets’ records to determine whether: 1) cadets with medical problems remain qualified for commissioning; 2) medical conditions warrant a medical waiver; and 3) a medically disqualified cadet is qualified for enlisted service. When the CMEB recommends disqualification, the Secretary makes the final decision on the case.

CASIE (Cadets Advocating Sexual Integrity and Education) (DFBLC Operating Instruction 75-7). The CASIE program has a two-fold purpose: 1) to operate a cadet run sexual assault Hotline for cadets and 2) to provide education to the Cadet Wing on the issue of sexual assault. The Hotline strives to: 1) provide support through trained peer-counselors; 2) provide current information on procedures, regulations, and referrals; and 3) encourage victims of sexual assault to utilize available services. The education component of CASIE has the following objectives: 1) to increase awareness of sexual assault, thereby increasing victim confidence and support; 2) to help cadets and staff respond to sexual assault victims with knowledge and compassion; and 3) to promote honest and open communication in relationships in order to prevent sexual assault. CASIE is administered by the Sexual Assault Services Branch in the Cadet Counseling Center (DFBLC).

Chain of Command (AF Cadet Wing Instruction 36-3004). Those cadets and officers in the hierarchy of supervision over any cadet. The immediate chain of command refers specifically to the lowest levels of the hierarchy (from rater to squadron commander or command equivalent).

Condonation (AF Cadet Wing Instruction 51-201). If a cadet overlooks or implies forgiveness of a violation (either at the time of occurrence or afterwards) of directives, policies or instructions and/or fails to take immediate action, he or she has condoned that misconduct.

Classes of Offenses.

Class A – Minor discrepancies in room maintenance and or personal appearance; minor infractions of procedures, standards or directives.

Class B – Duty related offenses; more serious violations of standards.

Class C – Behavior or relationship offenses, negligent infractions of procedures, directives or standards.

Class D – Serious violations of established standards or conduct violations indicating continued disregard for standards, alcohol related incidents, sexual misconduct.

Commander Directed Evaluation (CDE) (Air Force Instruction 44-109). A clinical assessment of a member for a mental, physical, or personality disorder, the purpose of which is to determine a member's clinical mental health status and/or fitness and/or suitability for service. At a minimum, the mental health evaluation shall consist of a clinical interview and mental status examination and may include, additionally: a review of medical records; a review of other records, such as the Service personnel record; information forwarded by the member's commanding officer; psychological testing; physical examination; and laboratory and/or other specialized testing. Interviews conducted by the Family Advocacy Program or Service's drug and alcohol abuse rehabilitation program personnel are not considered CDEs for the purpose of Air Force Instruction 44-109.

Conduct Probation (AF Cadet Wing Instruction 36-2401). The status of a cadet whose conduct raises doubt concerning his or her qualification to remain a cadet as determined by 34th Training Wing Commander, his or her designee, or the MRC. This type of probation is conduct-specific, and is normally tied to behavior documented on the AFCW Form 10. Failure to successfully complete this process will normally result in the convening of the MRC. The minimum period for Conduct Probation is three months.

Conduct Status (AF Cadet Wing Instruction 51-201):

Probationary. When a cadet accumulates seventy-five or more demerits within a 6-month moving period, the cadet must be placed on Conduct or Aptitude Probation.

Deficient. Cadets are deficient in conduct when: they are on conduct probation; they have met or exceeded seventy-five demerits in a moving 6-month period; have not demonstrated satisfactory performance during the Conduct Probation period; or, have committed major conduct violations showing a disregard for accepted standards of conduct.

Conduct Violation (AF Cadet Wing Instruction 51-201). A failure to meet Cadet Wing standards, whether through design, ignorance, negligence, carelessness or failure to perform duty.

Confinement (AF Cadet Wing Instruction 51-201). A 1-hour, 50-minute period during which a cadet is confined to his or her room. Confinements are normally given for Class A and B violations.

Demerit (AF Cadet Wing Instruction 51-201). A reference mark of conduct or deportment. A demerit is not a punishment, but excessive demerits can lead to disenrollment.

Discrimination (AF Cadet Wing Instruction 36-3004). Discrimination is defined as conduct or statements which reveal an inability or unwillingness to provide equal opportunity and fair and impartial treatment to an individual or group because of race, gender, religion, color, national origin or age.

Disenrollment (Air Force Instruction 36-2020). Termination of cadet status. Disenrollment is a consequence of the Superintendent's determination that a cadet is not qualified for commissioning. A cadet is disenrolled when the Secretary of the Air Force approves his or her resignation or dismissal adjudged by court martial; or accepts the recommendation of the Superintendent for involuntary disenrollment. Removal from the Cadet Wing pending disenrollment entails loss of entitlement to participate in academic, athletic, morale, and military programs, but does not in itself end cadet status or other military obligations, and some or all of its normal effects as described above may be suspended by the Superintendent. Final disposition of cadet military service obligations will be made by the Secretary of the Air Force.

Driving Privileges (AF Cadet Wing Instruction 51-201). Operating any type of motor vehicle, regardless of ownership, within the boundaries of the Academy, and within a 150-mile radius of USAFA. These privileges extend only to cadets in good standing.

First-Class cadet (C1C). Cadet in fourth year at the Academy (upperclass cadet). Also referred to as 1^o, first degree, or "firstie."

Form 10. The AFCW Form 10 is the prescribed method to document cadet conduct, e.g., conduct violations, and is entered in the Cadet Personnel Record as a record of behavior.

Fourth-Class cadet (C4C). Cadet in the first year at the Academy. Also referred to as 4^o, fourth degree, or doolie.

Fraternization (Air Force Instruction 36-2020). A relationship between officer and enlisted members that involves, or gives the appearance of, improper use of rank or position, partiality, or preferential treatment. At the Academy, it includes association on terms of undue familiarity or military equality, and dating between upperclass cadets and fourth-classmen, and between officers or enlisted personnel and cadets of any class. *See also* Air Force Cadet Wing Instruction 36-2909 for a discussion of Cadet Fraternization.

Good Standing (AF Cadet Wing Instruction 51-201). A cadet who does not have any outstanding punishments, is not on any formal probation and is performing up to the standards and expectations of cadet and superiors, as reflected by his or her MPA, Grade Point Average and Physical Education Average.

Hap's Place. Social gathering place for cadets located in Arnold Hall which serves beer. Only first and Second-Class cadets and their civilian guest(s), of legal age, are authorized use of "Hap's Place."

Hazing (AF Cadet Wing Instruction 36-2909). Defined at the Academy as any unauthorized assumption of authority by a cadet whereby another cadet suffers or is exposed to any cruelty, indignity, humiliation, oppression, or the deprivation or abridgment of any right.

"Hits." Slang term for demerits. *See* "demerit," above.

Honor Board (AFCW Honor Code Reference Handbook). The purpose of the Wing Honor Board is to review evidence and hear testimony from the respondent and witnesses in the case, to discuss the evidence, and to make a judgment as to whether or not the respondent violated the Honor Code. Wing Honor Board proceedings are non-adversarial administrative actions having no prosecutor or defense representation. Hence legal counsel is not permitted in the boardroom during the proceedings, but counsel may be present outside the boardroom to consult with the respondent during recesses.

Inappropriate Material (AF Cadet Wing Instruction 34-601). Inappropriate material includes, but is not limited to, material which insinuates, promotes, or tolerates discrimination based upon

race, gender, religion, color, national origin or age; displays obscene, lewd, profane or suggestive content; challenges authority; shows disrespect to the nation or its leadership; or discredits the Academy or the Air Force. Examples of material considered inappropriate include, but are not limited to, material which displays men or women in revealing clothing. A general guideline for inappropriate material is whether the picture openly or cryptically displays breasts of women, buttocks, or genitals of the individual. A second standard would be whether the standard of dress is normally accepted in society. Other inappropriate material may be flags which may be considered offensive to others; e.g., Nazi flags, Nation of Islam flags, etc. Any material whose intent is to degrade or imply a negative distinction or perception, stereotype, attitude, or overtone about a person's age, color, national origin, race, ethnic group, religion, or sex would be considered inappropriate. Alcohol memorabilia is also inappropriate.

Incident (AF Cadet Wing Instruction 51-201). One or more conduct violations connected by time and/or circumstance. A review of the overall incident will determine the extent of the punishments/sanctions awarded.

Instruction. Used interchangeably with "regulation," it commonly refers to a directive issued by the Air Force or the Academy.

Life Skills Center. The mental health services component of Air Force medical facilities, e.g., Medical Groups or Medical Squadrons.

Medical Turnback (USAFA Instruction 48-104/USAFA Instruction 36-169). Cadets placed on medical turnback status are permitted to leave the Academy in a leave without pay status to allow time for their medical condition to resolve. Cadets are recommended for this program only if it is anticipated that their medical problem can be corrected within one year. The cadet is able to obtain medical care at government expense while on medical turnback status.

Military Review Committee (AF Cadet Wing Instruction 51-201/AF Cadet Wing Instruction 36-2401). A standing committee of the Academy Board that reviews cadet records and makes decisions on the placement, continuation or removal of cadets on Aptitude or Conduct Probation. The MRC makes recommendations to the Superintendent on disenrollment of cadets deficient in aptitude for commissioned service, as evidenced by a deficient MPA and/or conduct history. A cadet may be separated for a pattern of disciplinary infractions, a pattern of misconduct, commission of an offense for which dismissal could be adjudged under the UCMJ, or civilian conviction. A cadet may also be separated for harassment or violence against any service member.

Military Training Leader (MTL) (34 Training Group Operating Instruction 36-12). Active duty noncommissioned officer who serves as the First Sergeant to the AOC and Cadet Squadron of approximately 110 Air Force Academy cadets. Functions as advisor to the AOC on cadet issues. Serves as NCO role model for cadets. Conducts military related training, monitors and advises on drill and ceremonies, and assists in counseling cadets on personal and professional matters. Assists the AOC and Center for Character Development in educating cadets on character, honor and human relations. Provides educational support through the Training Squadron in curriculum areas relating to leadership, management and the enlisted force. Supports physical fitness programs, training weekends, military training periods and social functions.

Moving 6-Month Period (AF Cadet Wing Instruction 51-201). Any consecutive 6-month period (including leave periods and summer training) when demerits can accumulate. Include all demerits received during the most recent 6-months to determine a cadet's conduct status. The date the awarding official signs the block at the bottom of the AFCW Form 10 is the date used to determine the final date the demerits apply (for example, demerits awarded on 15 Jan count until 15 Jul).

Negligence (AF Cadet Wing Instruction 51-201). The failure to exercise the degree of judgment, care or caution, under the circumstances, which would be expected of a reasonable, prudent person.

“Over the Fence (OTF).” Cadet’s unauthorized temporary departure from Academy grounds.

Physical Review Committee (PERC) (Air Force Instruction 36-2020). The PERC evaluates cadets whose physical fitness or performance in physical education or intramural training is deficient. The PERC may: 1) Direct corrective measures, including aptitude probation or 2) Refer cadets for possible disenrollment.

Regulation. Used interchangeably with “Instruction.”

Resignation (Air Force Instruction 36-2020). A cadet requests separation from the Academy and/or discharge from the Air Force. If the request for resignation is approved, the cadet is disenrolled and either discharged or separated according to USAFA Instruction 48-104.

Restriction (AF Cadet Wing Instruction 51-201). A disciplinary sanction/status imposed on cadets to restrict their freedom of location and movement.

Second-Class cadet (C2C). Cadet in third year at USAFA. Also referred to as 2^o or 2nd degree.

Sexual Assault Services Committee (SASC) (USAFA Instruction 51-201). The Sexual Assault Services Committee at the Academy serves as the (1) office of primary responsibility (OPR) for coordinating medical services, psychological counseling, legal advice, administrative intervention, and education concerning sexual assault; (2) key administrative body for the Cadet Sexual Assault Hotline, and the Victim Advocate Program; and (3) central resource for tracking and monitoring reported cases of sexual assault.

Sexual Harassment (AF Cadet Wing Instruction 36-2909). Sexual harassment is a form of sex discrimination that involves unwanted sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. This differs from an unprofessional relationship which involves mutual consent by all involved.

Sexual Harassment (Air Force Instruction 36-2706). A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission of such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay, or career or (quid pro quo harassment).
- Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or (quid pro quo harassment).
- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment.
- This definition emphasizes that workplace conduct, to be actionable as “abusive work environment” harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. (“Workplace” is an expansive term for military members and may include conduct on or off duty, twenty-four hours-a-day.) Any person in a supervisory or command position who uses or condones any form

of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

Sexual Misbehavior (AF Cadet Wing Instruction 36-2909). This includes, but is not limited to the following offenses:

Sexual intercourse under circumstances which may bring discredit to the Cadet Wing, Academy, the Air Force, or which indicate a character or an attitude inconsistent with commissioning. This includes sexual intercourse in the dormitories, on a military installation, the Academy reservation, or while on an Academy-sponsored activity such as squadron, club or intercollegiate trips.

Lewd or indecent acts or assaults (rape) as defined in Article 134 of the UCMJ.

Homosexual act(s), attempt(s) to engage in homosexual act(s) or soliciting another to engage in a homosexual act or relationship. A board of officers will convene according to Air Force Instruction 51-602, Board of Officers.

Other indecent acts subject to prosecution by local, state, federal or military jurisdictions (involuntary disrobing or exposing another is an indecent act and a serious invasion of privacy).

Staff Team. The staff team, also referred to as the “fact-finding team” and the “investigative report team,”; one or more teams of Air Force lawyers, paralegals and other staff experts that assisted the Working Group in collecting, analyzing evidence, and helping write the Working Group’s report.

Squadron Commander’s Review Board (AF Cadet Wing Instruction 51-201). This board may make recommendations through cadet and officer chain of commands to the Group AOC/MTL.

Squadron Duty Officer. The squadron duty officer is accountable to the squadron commander and is responsible for maintaining security order and discipline in the squadron area.

Summer Training Review Committee (STRC) (Air Force Instruction 36-2020). The STRC evaluates cadets whose performance or conduct during cadet summer training programs shows questionable aptitude for commissioned service. The STRC may direct corrective measures (including probation) or refer cadets for possible disenrollment.

“Terrazzo Booty.” A term intended to describe the weight gain of female cadets during the period from their status as Fourth-Class cadet to First-Class cadet.

TESSA (Trust, Education, Safety, Support and Action). A private nonprofit organization which provides support services for victims of domestic violence or sexual assault.

Third-Class cadet (C3C). Cadet in second year at the Academy. Also referred to as 3° or third degree.

Tour (AF Cadet Wing Instruction 51-201). A 1-hour period during which a cadet marches under arms under the supervision of the AFCW/DO. Tours are normally given for Class C or D offenses. However, the awarding official can give tours for Class A or B offenses if mitigating circumstances dictate.

Verbal Abuse (AF Cadet Wing Instruction 36-3004). Verbal abuse is defined as any language or tone of voice that is unnecessarily out-of-control, defamatory, profane, insulting, demeans the subordinate, or minimizes a cadet as a human being. Abusive comments made in jest are also prohibited.

Appendix C

Acronyms

Abbreviation	Meaning
ABW	Air Base Wing
ACES	Academy Character Enrichment Seminar
ACQ	Academic Call to Quarters
ADAPT	Alcohol Drug Abuse Prevention and Treatment Program
AF	Air Force
AFA	Air Force Academy
AFCW	Air Force Cadet Wing
AFCWI	Air Force Cadet Wing Instruction
AFI	Air Force Instruction
AFOSI	Air Force Office of Special Investigations
AH	Department of Athletics
AFMOA	Air Force Medical Operations Agency
AOC	Air Officer Commanding
ARC	Academic Review Committee
BCT	Basic Cadet Training
C1C	First-Class cadet (also known as First Degree, or Firstie)
C2C	Second-Class cadet (also known as Second Degree)
C3C	Third-Class cadet (also known as Third Degree)
C4C	Fourth-Class cadet (also known as Fourth Degree, or Doolie)
CASIE	Cadets Advocating Sexual Integrity and Education
CC	Commander
CCQ	Cadet-in-Charge of Quarters
CIF	Cadet Information File
CMEB	Cadet Medical Evaluation Board
CV	Vice Commander
DF	Dean of Faculty
DFBLC	Academy's Cadet Counseling and Leadership Development Center
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DoDR	Department of Defense Regulation
DRU	Direct Reporting Unit
DUI	Driving Under the Influence
DWAI	Driving While Ability Impaired
FOUO	For Official Use Only
GAO	US General Accounting Office
GPA	Grade Point Average
HREO	Human Resources Education Officer
IAW	In Accordance With
IM	Internet Message
IO	Inquiry Officer
MDG	Medical Group
MEB	Medical Evaluation Board

Abbreviation	Meaning
MFR	Memorandum For Record
MPA	Military Performance Appraisal
MRC	Military Review Committee
MSS	Military Strategic Studies
MTL	Military Training Leader
MWR	Morale, Welfare and Recreation
NCO	Noncommissioned Officer
NCOIC	Noncommissioned Officer in Charge
OI	Operating Instruction
OIC	Officer in Charge
OPR	Office of Primary Responsibility
OPR	Officer Performance Report
OSI	Office of Special Investigation
OTF	Over The Fence
PE	Policy and Evaluation
PEA	Physical Point Average
PERC	Physical Education Review Committee
PFT	Physical Fitness Test
POV	Privately Owned Vehicle
SAAM	Sexual Assault Awareness Month
SAMI	Saturday Morning Inspection
SANE	Sexual Assault Nurse Examiner
SECAF	Secretary of the Air Force
SJA	Staff Judge Advocate
SOD	Senior Officer of the Day
SUPE	Superintendent
TDY	Temporary Duty
TESSA	Trust, Education, Safety, Support and Action
TRG	Training Group
TRW	Training Wing
UCMJ	Uniform Code of Military Justice
UOD	Uniform of the Day
USAF	United States Air Force
USAF A	United States Air Force Academy
USAF AI	United States Air Force Academy Instruction
VAP	Victim Advocate Program
VWAP	Victim Witness Assistance Program

Appendix D

Table of Authorities

5 U.S.C. § 552a, *Privacy Act of 1974 – As Amended*

10 U.S.C. §§ 801 - 946, *Uniform Code of Military Justice*

18 U.S.C. § 1512, *Tampering With a Witness, Victim, or an Informant*

18 U.S.C. § 1513, *Retaliating Against a Witness, Victim, or an Informant*

42 U.S.C. §§ 10601 - 10605, *The Victims' Rights and Restitution Act of 1990*

DoD Directive 1030.1, *Victim and Witness Assistance*, 23 November 1994

DoD Instruction 1030.2, *Victim and Witness Assistance Procedures*, 23 December 1994

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DoD Publication 5400.7-R, *DoD Freedom of Information Act Program*, September 1998

DoD Instruction 5504-3, *Initiation of Investigations by Military Criminal Investigative Organizations*, 21 June 2002

DoD Instruction 5505.3, *Initiation of Investigations by Military Criminal Investigative Organizations*, June 21, 2002

DoD Regulation 6025.18R, *DoD Health Information Privacy Regulation*, January 2003

Air Force Mission Directive 39, *Air Force Office of Special Investigations (AFOSI)*, 1 November 1995

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Air Force Policy Directive 71-1, *Criminal Investigations and Counterintelligence*, 1 July 1999

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Air Force Policy Directive 90-3, *Inspector General—The Complaints Program*, 1 November 1999

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Air Force Instruction 36-2020, *Disenrollment of United States Air Force Academy Cadets*, 22 April 1999

Air Force Instruction 36-2110, *Assignments*, 1 February 2000

Air Force Instruction 36-2706, *Military Equal Opportunity and Treatment Program*, 1 December 1996

Air Force Instruction 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, 6 July 2000

Air Force Instruction 44-102, *Community Health Management*, 17 November 1999

Air Force Instruction 44-109, *Mental Health, Confidentiality, and Military Law*, 1 March 2000

Air Force Instruction 51-201, *Administration of Military Justice*, 2 November 1999

Air Force Instruction 51-202, *Nonjudicial Punishment*, 1 July 2002

Air Force Instruction 51-602, *Boards of Officers*, 2 March 1994

Air Force Instruction 51-904, *Complaints of Wrongs under Article 138, Uniform Code of Military Justice*, 30 June 1994

Air Force Instruction 71-101, Volume 1, *Criminal Investigations*, 1 December 1999

Air Force Instruction 90-201, *Inspector General Activities*, 1 October 2002

Air Force Instruction 90-301, *Inspector General Complaints*, 30 January 2001

United States Air Force Academy Instruction 36-101, *Preparation and Use of USAFA Form 9, Clearance Record for Separating*, 20 July 2000

United States Air Force Academy Instruction 36-150, *Appointment and Promotion to Academic Ranks*, 28 November 2000

United States Air Force Academy Instruction 36-151, *Permanent Professors*, 20 March 2000

United States Air Force Academy Instruction 36-152, *The Cadet Helping Agencies Team (CHAT)*, 6 April 1999

United States Air Force Academy Instruction 36-154, *Preparation and Use of USAFA Form 4, Cadet Referral*, 17 April 2000

United States Air Force Academy Instruction 36-155, *Cadet Extracurricular Activities Program*, 30 September 1996

United States Air Force Academy Instruction 36-156, *Doolie Day Out and Cadet Sponsor Programs*, 18 October 1995

United States Air Force Academy Instruction 36-157, *Violations of Academic Standards*, 12 August 2001

United States Air Force Academy Instruction 36-164, *Review and Disposition of Deficient Cadets*, 26 November 2000

United States Air Force Academy Instruction 36-168, *USAF Academy Honor Review Committee*, 3 January 2002

United States Air Force Academy Instruction 36-169, *Apply for and Administering Cadet Turnback Programs*, 17 July 2002

United States Air Force Academy Instruction 36-170, *Cadet Personnel Records*, 31 May 2002

United States Air Force Academy Instruction 36-171, *Academic Counseling and Registration*, 22 July 2002

United States Air Force Academy Instruction 36-172, *Assigning Squadrons and In-Processing Returning Cadets*, 12 May 1999

United States Air Force Academy Instruction 36-173, *Organization of the USAF Academy Program for Air Force Cadets*, 20 March 2000

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United States Air Force Academy Instruction 36-180, *Allocation of Cadet Time*, 17 May 1999

United States Air Force Academy Instruction 36-182, *Cadet Nonacademic Appointment System (NAS)*, 12 August 2001

United States Air Force Academy Instruction 36-185, *Cadet Accountability System (CAS)*, 3 May 2001

United States Air Force Academy Instruction 36-187, *The US Air Force Academy Board*, 19 July 2000

United States Air Force Academy Instruction 36-2101, *USAF Tour Lengths, Extensions, and Early Release*, 13 October 1995

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34 Training Group Operating Instruction 36-1, *Procedures for Cadet Wing Morale, Health, & Welfare Inspections*, 28 October 2002

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34 Training Group Operating Instruction 36-12, *34th Training Group/Cadet Group, Officer, and Enlisted Personnel Duties and Responsibilities*, 1 November 2000

34 Training Group Operating Instruction 36-133, *Command and Control*, 15 November 1999

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34 Training Group Operating Instruction 36-180, *Policies and Procedures for USAFA Form 17s*, 1 November 1999

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34 Training Group Operating Instruction 37-1, *Staff Procedures*, 23 July 01

34 Training Group Operating Instruction 50-6, *Commandant of Cadets Military Training Period (M5)*, 1 August 1999

34 Training Group Operating Instruction 53-99, *Procedures for Cadet Wing Key Issue & Return*, 1 May 1999

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Air Force Cadet Wing Instruction 36-2401, *Cadet Evaluation System*, 24 October 2001

Air Force Cadet Wing Instruction 36-2909, *Conduct Standards*, 26 September 2001

Air Force Cadet Wing Instruction 36-3001, *Limits, Passes, and Leave*, 30 August 2002

Air Force Cadet Wing Instruction 36-3004, *Military Training Standards*, 10 August 2000

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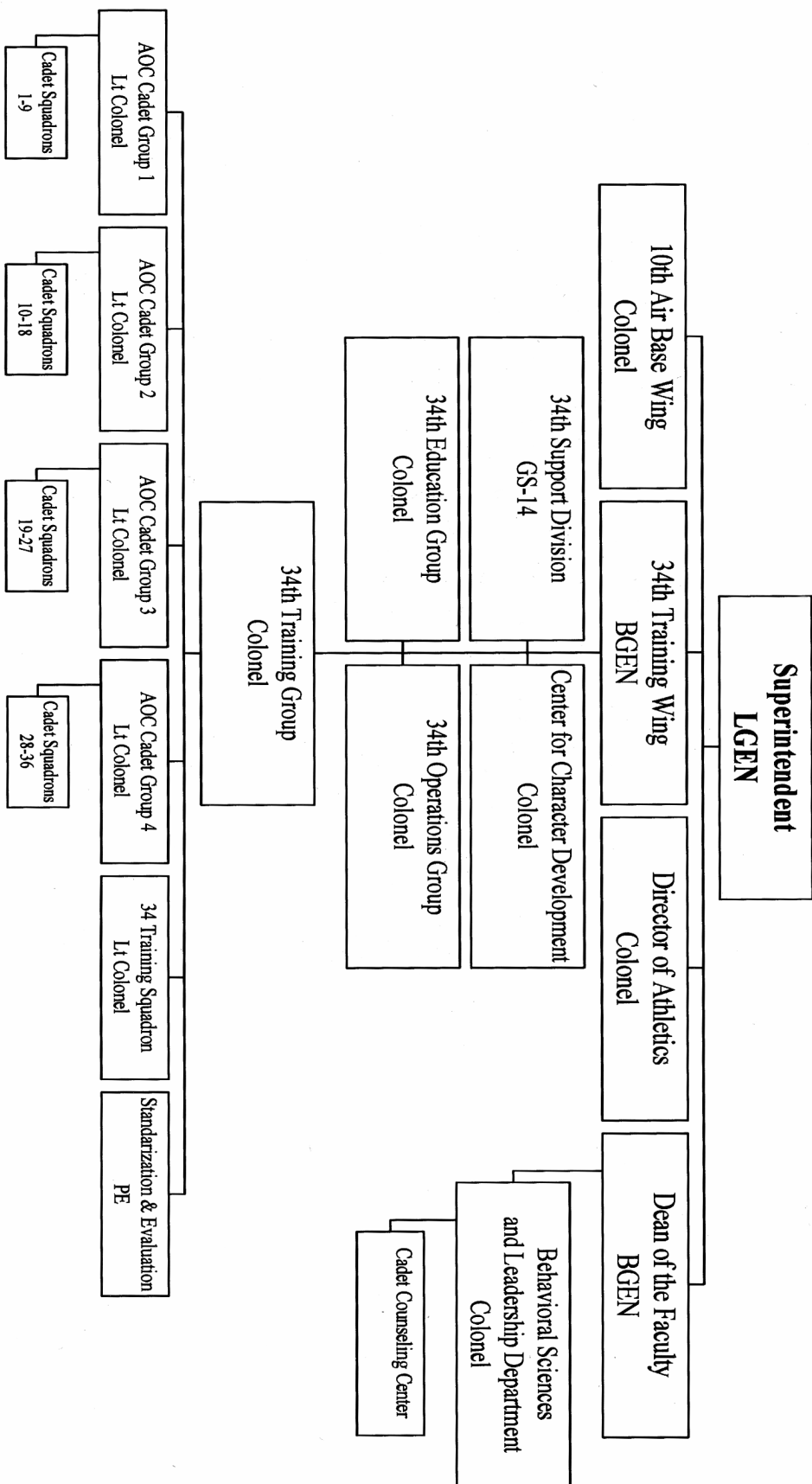
Air Force Cadet Wing Instruction 38-103, *Operations Center Organization*, 2 October 2000

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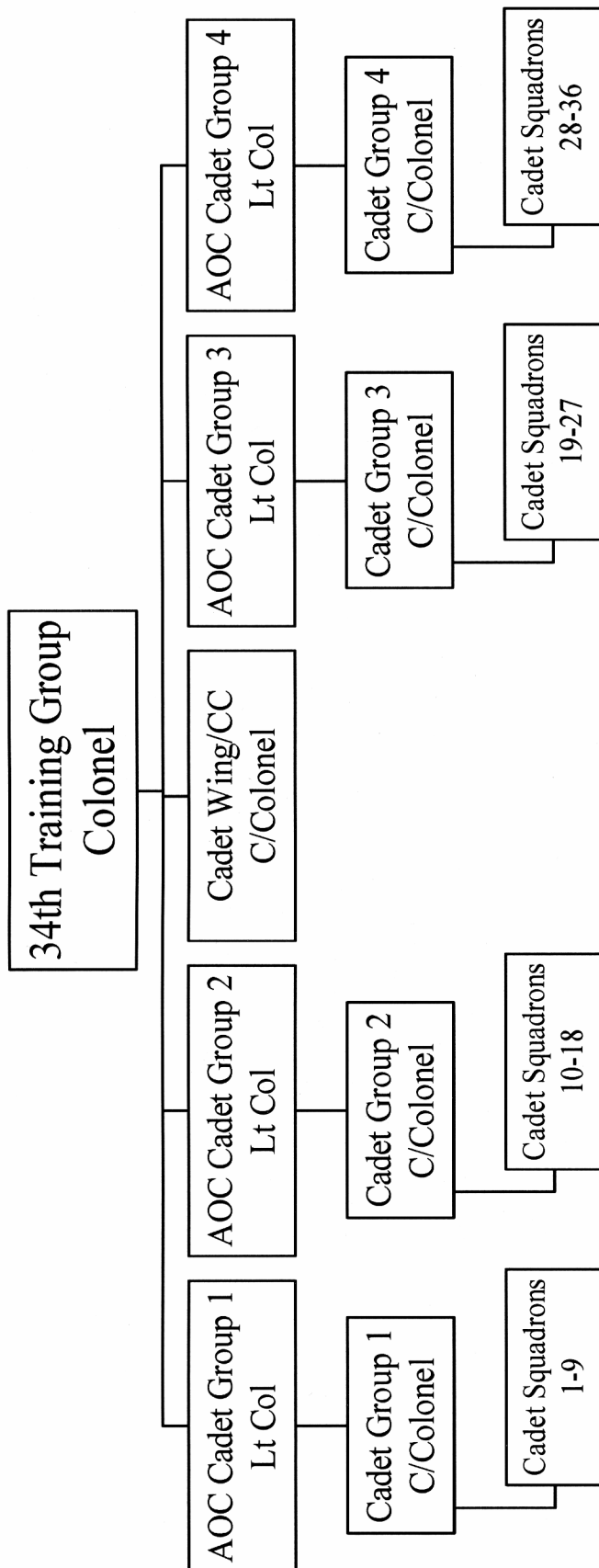
Counseling Center Operating Instruction 75-6, *Victim Advocate Program*

*Academy Organization Chart*¹³⁶⁸
(Selected Positions)



¹³⁶⁸ Academy Organization and Function Chart book, Exhibit 9, at 11, 27, 38; and Organization Chart for Academy and Cadet Wing Organization, Exhibit 371

Academy Cadet Wing Organization Chart¹³⁶⁹



¹³⁶⁹ Organization chart for USAFA and Cadet Wing Organization, Exhibit 371.